

SCHEDULES

SCHEDULE 11

Section 130

PUBLIC HEALTH PROTECTION: FURTHER AMENDMENTS

Introductory

- 1 In this Schedule “the 1984 Act” means the Public Health (Control of Disease) Act 1984 (c. 22).

Local Government, Planning and Land Act 1980 (c. 65)

- 2 In section 159 of the Local Government, Planning and Land Act 1980 (public health etc.), in subsection (1), omit paragraph (e) and the word “and” immediately preceding it.

Public Health (Control of Disease) Act 1984

- 3 (1) Section 1 (authorities administering Act) of the 1984 Act is amended as follows.
- (2) For subsection (1) substitute—
- “(1) In this Act “local authority” means any of the following—
- (a) a district council;
 - (b) in England, a county council for an area for which there is no district council;
 - (c) in Wales, a county council or county borough council;
 - (d) a London borough council;
 - (e) the Common Council of the City of London;
 - (f) the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple;
 - (g) the Council of the Isles of Scilly.”
- (3) Omit subsections (2) and (4).
- 4 (1) Section 5 of the 1984 Act (financial provisions as to port health authorities) is amended as follows.
- (2) In subsection (2), for the words from “shall” onwards substitute “shall be defrayed by the constituent districts in such proportions and in such manner as may be determined by or in accordance with the order.”
- (3) In subsection (3), omit “or rating districts”.
- 5 In section 7 of the 1984 Act (port health district and authority for Port of London), in subsection (4), omit paragraphs (c) and (d).
- 6 Omit section 9 of the 1984 Act (vessels in inland or coastal waters).

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- 7 In section 48 of the 1984 Act (removal of body to mortuary or for immediate burial), in subsection (1), for the words from “in any building” to “neighbouring building” substitute “in any place would endanger the health of any person”.
- 8 In section 49 of the 1984 Act (regulations as to canal boats), in subsection (1)—
- (a) at the end of paragraph (a) insert “and”,
 - (b) omit paragraph (c) and the word “and” immediately preceding it.
- 9 In section 50 of the 1984 Act (power to enter and inspect canal boats), in subsection (2)—
- (a) omit paragraph (b) and the word “or” immediately preceding it, and
 - (b) omit “or any person on board suffering from an infectious disease”.
- 10 In section 51 of the 1984 Act (duties of local authorities and port health authorities under Part 4)—
- (a) omit subsection (1), and
 - (b) in subsection (2) omit the words “the provisions of this Part of this Act and”.
- 11 Omit section 52 of the 1984 Act (prosecution of offences under Part 4).
- 12 Omit sections 54 to 57 of the 1984 Act.
- 13 In section 58 of the 1984 Act (form of notices and other documents), in subsection (1) for “local authority” (in each place it occurs) substitute “relevant health protection authority”.
- 14 In section 59 of the 1984 Act (authentication of documents)—
- (a) for “local authority” (wherever it occurs) substitute “relevant health protection authority”, and
 - (b) in subsection (2) for “byelaws” substitute “regulations”.
- 15 In section 60 of the 1984 Act (service of notices and other documents) for “made by this Act” substitute “made by or under this Act”.
- 16 After section 60 of the 1984 Act insert—

“60A Electronic communications

- (1) The appropriate Minister may by regulations make provision enabling notices, orders and other documents specified in the regulations to be given or served by an electronic communication.
- (2) Such provision must however secure that the notices, orders and other documents specified in the regulations may only be so given or served if—
 - (a) the person to whom they are to be given or on whom they are to be served has consented in writing to the receipt of notices, orders and other documents by an electronic communication, and
 - (b) the communication is sent to the number or address specified by that person when giving consent.
- (3) The power to make regulations under this section is exercisable by statutory instrument.
- (4) An instrument containing any such regulations is subject to annulment—

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- (a) in the case of regulations made by the Secretary of State, in pursuance of a resolution of either House of Parliament;
 - (b) in the case of regulations made by the Welsh Ministers, in pursuance of a resolution of the National Assembly for Wales.
 - (5) Sections 58 to 60 are to be read subject to any provision made in regulations under this section.
 - (6) In this section—
 - “electronic communication” has the same meaning as in the Electronic Communications Act 2000,
 - “notices, orders and other documents” means notices, orders and other documents authorised or required by or under this Act to be given or served, and
 - “the appropriate Minister” means—
 - (a) the Secretary of State, in relation to England;
 - (b) the Welsh Ministers, in relation to Wales.”
- 17 (1) Section 61 of the 1984 Act (power to enter premises) is amended as follows.
- (2) In subsection (1)—
 - (a) for “authorised officer of a local authority” substitute “proper officer of a relevant health protection authority”,
 - (b) for paragraph (a) substitute—
 - “(a) for the purposes of ascertaining whether there is, or has been, any contravention of a relevant provision of this Act, or of an order made by a justice of the peace under Part 2A of this Act, which it is the function of the relevant health protection authority to enforce,”, and
 - (c) in each of paragraphs (b), (c) and (d)—
 - (i) for “or such byelaws” substitute “or in relation to such an order”, and
 - (ii) for “local authority” substitute “relevant health protection authority”.
 - (3) In subsection (2) omit “, other than a factory or workplace,”.
 - (4) After subsection (2) insert—
 - “(2A) Subsection (1) does not authorise entry to any part of premises which is used as a private dwelling (but this does not affect the power of a justice of the peace under subsection (3) to issue a warrant authorising entry to a private dwelling or to any part of premises used as a private dwelling).”
 - (5) In subsection (3), for “the local authority by any authorised officer” substitute “the relevant health protection authority by any proper officer”.
- 18 (1) Section 62 of the 1984 Act (supplementary provisions as to entry) is amended as follows.
- (2) In subsection (1)—
 - (a) for “An authorised officer” substitute “A proper officer (“the officer”)", and
 - (b) after “other persons” insert “and such equipment and materials”.
 - (3) After subsection (1) insert—

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“(1A) The officer may for the purpose for which entry is authorised—

- (a) search the premises,
- (b) carry out measurements and tests of the premises or of anything found on them,
- (c) take and retain samples of the premises or of anything found on them,
- (d) inspect and take copies or extracts of any documents or records found on the premises,
- (e) require information stored in an electronic form and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form, and
- (f) seize and detain or remove anything which the officer reasonably believes to be evidence of any contravention relevant to the purpose for which entry is authorised.”

(4) Omit subsection (3).

(5) For subsection (4) substitute—

“(4) Nothing in section 61 or this section limits the provisions of Parts 2A and 4, and of regulations made under Part 2A, with respect to entry into or upon, and inspection of, any premises.”

19 For section 63 of the 1984 Act substitute—

“63 Offence of wilful obstruction

- (1) A person commits an offence if the person wilfully obstructs any person acting in the execution of a provision of Part 3 or 4 or this Part, or of any regulations, order or warrant made or issued under such a provision.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction—
 - (a) in the case of an offence of wilfully obstructing a person in the execution of a provision of Part 4 or of any regulations made under a provision of that Part, to a fine not exceeding level 1 on the standard scale, and
 - (b) in any other case, to a fine not exceeding £20,000.”

20 After section 63 of the 1984 Act insert—

“63A Offences by bodies corporate

- (1) If an offence created by or under this Act is committed by a body corporate and is proved—
 - (a) to have been committed with the consent or connivance of an officer, or
 - (b) to be attributable to any neglect on the part of an officer,
 the officer (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.

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- (2) “Officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.
- (3) If the affairs of a body corporate are managed by its members, subsection (1) applies to the acts and defaults of a member in connection with the member’s functions of management as if the member were a director of the body corporate.

63B Unincorporated associations

- (1) Proceedings for an offence alleged to have been committed by an unincorporated association are to be brought in the name of the association (and not in that of any of the members).
- (2) Rules of court relating to the service of documents have effect as if the unincorporated association were a body corporate.
- (3) In proceedings for an offence brought against an unincorporated association, Schedule 3 to the Magistrates’ Courts Act 1980 applies as it applies to a body corporate.
- (4) A fine imposed on an unincorporated association on its conviction for an offence is to be paid out of the funds of the association.
- (5) If an offence committed by an unincorporated association is proved—
 - (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
 - (b) to be attributable to any neglect on the part of such an officer or member,the officer or member (as well as the association) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (6) In this section, “offence” means an offence created by or under this Act.”

21 (1) Section 64 of the 1984 Act (restriction on right to prosecute) is amended as follows.

(2) For subsection (1) substitute—

- “(1) Proceedings in respect of an offence created by a provision of, or regulations under, this Act may not be taken by any person other than—
- (a) a relevant health protection authority,
 - (b) a body whose function it is to enforce the provision or regulation in question, or
 - (c) a person who made (or whose predecessors made) the regulation in question.”

(3) Subsection (2) is omitted.

22 After section 64 of the 1984 Act insert—

“64A Time limits for prosecutions

- (1) Notwithstanding anything in section 127(1) of the Magistrates’ Courts Act 1980, a magistrates’ court may try an information (or written charge) relating

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to an offence created by or under this Act if the information is laid (or the charge is issued)—

- (a) before the end of the period of 3 years beginning with the date of the commission of the offence, and
- (b) before the end of the period of 6 months beginning with the date on which evidence which the prosecutor thinks is sufficient to justify the proceedings comes to the prosecutor’s knowledge.

(2) For the purposes of subsection (1)(b)—

- (a) a certificate signed by or on behalf of the prosecutor and stating the date on which such evidence came to the prosecutor’s knowledge is conclusive evidence of that fact, and
- (b) a certificate stating that matter and purporting to be so signed is to be treated as so signed unless the contrary is proved.”

23 (1) Section 67 of the 1984 Act (applications to, and appeals from, magistrates' courts) is amended as follows.

(2) In subsection (1), after “this Act” insert “or a provision contained in regulations made under this Act”.

(3) Omit subsection (3).

24 For section 69 of the 1984 Act substitute—

“69 Protection from personal liability

(1) Nothing done by a relevant health protection authority or by one of its officers, and no contract entered into by such an authority, is to subject the authority or officer to any action, liability, claim or demand whatsoever if the thing is done, or the contract is entered into, bona fide for the purposes of executing a relevant provision of this Act.

(2) Any expense incurred by any such authority or officer acting bona fide as mentioned in subsection (1) is to be borne and repaid out of the fund applicable by the authority to its functions of executing the provision in question.

(3) Reference in this section to an officer of a relevant health protection authority also includes a member of that authority and any person acting under the direction of that authority.”

25 Omit section 70 of the 1984 Act (local inquiries).

26 For section 71 of the 1984 Act substitute—

“71 Default powers

(1) Subsection (2) applies if the appropriate Minister is satisfied that a relevant health protection authority has failed to discharge its functions under a relevant provision of this Act in any case where it ought to have discharged them.

(2) The appropriate Minister may make an order—

- (a) declaring the authority to be in default, and

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- (b) directing the authority to discharge such of its functions, and in such manner and within such time or times, as may be specified in the order.
 - (3) If the authority fails to comply with a requirement of the order within the specified time, the appropriate Minister may—
 - (a) enforce the order by mandatory order or otherwise, or
 - (b) make an order transferring such of the functions of the authority to the Minister or such other public authority as may be specified in the order.
 - (4) If functions are transferred by virtue of subsection (3)(b) to the Minister, the Minister may direct another public authority to discharge them on the Minister’s behalf.
 - (5) An order under subsection (3)(b) may include provision about the funding of the functions, including provision requiring the relevant health protection authority to bear any costs associated with the discharge of those functions by or on behalf of the Minister or other public authority.
 - (6) The appropriate Minister may vary or revoke an order made by the Minister under subsection (3)(b), but without prejudice to anything previously done under it.
 - (7) If such an order is revoked, the appropriate Minister may, either by the revoking order or by a subsequent order, make provision with respect to the transfer, vesting and discharge of any property or liabilities acquired or incurred by or on behalf of the Minister or other public authority in discharging any functions to which the revoking order related.”
- 27 In section 72 of the 1984 Act (cumulative effect of Act) for “by this Act” substitute “by or under this Act”.
- 28 In section 73 of the 1984 Act (Crown property) after subsection (4) insert—
- “(5) In this section “premises” does not include any vessel—
 - (a) belonging to Her Majesty, or
 - (b) under the command or charge of an officer holding Her Majesty’s commission.”
- 29 (1) Section 74 of the 1984 Act (interpretation) is amended as follows.
- (2) For the definition of “district” substitute—
- ““district” means—
 - (a) in relation to a local authority in Greater London, a London borough, the City of London, the Inner Temple or the Middle Temple,
 - (b) in relation to a local authority in England for an area for which there is no district council, that area,
 - (c) in relation to a local authority in Wales, a county or county borough,
 - (d) in relation to the Council of the Isles of Scilly, those Isles;”.
- (3) In the definition of “local authority” for “section 1(2)” substitute “section 1(1)”.

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- (4) For the definition of “premises” substitute—
- ““premises” includes any place and, in particular, includes—
- (a) any vehicle, train, vessel or aircraft,
- (b) any tent or movable structure, and
- (c) any offshore installation (as defined in section 12(1) of the Mineral Workings (Offshore Installations) Act 1971);”.
- (5) In the definition of “relevant provision of this Act”, before “other” insert “(including a provision in regulations made under this Act)”.
- (6) In the appropriate place, insert the following definitions—
- ““public authority” has the meaning given in section 6(3) of the Human Rights Act 1998;”,
- ““relevant health protection authority” means—
- (a) a local authority, port health authority or joint board with functions under a relevant provision of this Act, and
- (b) if regulations under Part 2A confer functions on a public authority of any other description and state that the authority is to be regarded as a relevant health protection authority with respect to those functions, that authority;”.
- (7) The following definitions are omitted—
- (a) “coastal waters”;
- (b) “common lodging-house”;
- (c) “dustbin”;
- (d) “factory”;
- (e) “hospital”;
- (f) “house”;
- (g) “inland waters”;
- (h) “local Act”;
- (i) “NHS trust” and “NHS contract”;
- (j) “notifiable disease”;
- (k) “rating district”;
- (l) “school”;
- (m) “street”.
- 30 Omit section 76 of the 1984 Act (Isle of Man and Channel Islands).

Planning and Compensation Act 1991 (c. 34)

- 31 In Part 1 of Schedule 18 to the Planning and Compensation Act 1991 (provisions that do not provide for interest) omit the entry for section 57 of the Public Health (Control of Disease) Act 1984.