

## SCHEDULE

### PART IV OF THE PRINCIPAL REGULATIONS AS AMENDED

## PART IV

### ENFORCEMENT AND OFFENCES

#### Disapplication of the 1974 Act

**9.**—(1) For the purposes of sections 16 to 24, 26, 28, 33 to 40, 42, 46 and 47 of the 1974 Act, the provisions of the workplace fire precautions legislation shall be deemed (to the extent they would otherwise be so regarded) not to be provisions of health and safety regulations or provisions forming part of the relevant statutory provisions.

(2) In these Regulations “the workplace fire precautions legislation” means—

(a) Part II of these Regulations except in so far as that Part applies to—

- (i) any workplace which is or is in or on a ship within the meaning of section 313(1) of the Merchant Shipping Act 1995<sup>(1)</sup> when such a ship is in the course of construction or is in the course of repair by persons who include persons other than the master and crew of the ship;
- (ii) any workplace, other than a building on the surface at a mine, to the extent that it comprises premises to which the Fire Certificates (Special Premises) Regulations 1976<sup>(2)</sup> apply; and

(b) regulations 1 to 4, 6 to 10 and 11(2) and (3) of the 1992 Management Regulations (as amended by Part III of these Regulations), in so far as those regulations—

- (i) impose requirements concerning general fire precautions to be taken or observed by an employer; and
- (ii) have effect in relation to a workplace in Great Britain other than an excepted workplace, and for this purpose “general fire precautions” means measures which are to be taken or observed in relation to the risk to the safety of employees in case of fire in a workplace, other than any special precautions in connection with the carrying on of any manufacturing process.

(3) In this regulation “health and safety regulations” and “the relevant statutory provisions” have the meanings given to them by the 1974 Act<sup>(3)</sup>.

#### Enforcement

**10.**—(1) It shall be the duty of every fire authority to enforce within their area the workplace fire precautions legislation.

(2) A fire authority may perform their functions under these Regulations through inspectors appointed by them pursuant to section 18(1) of the 1971 Act.

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(6) In sections 24 and 33(1) of the Fire Services Act 1947<sup>(4)</sup> (which authorise the appointment of inspectors and the holding of inquiries for obtaining information as to the performance by fire

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(1) 1995 c. 21.

(2) S.I.1976/2003.

(3) See section 53 of the 1974 Act.

(4) 1947 c. 41.

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authorities of their functions under that Act) the references to that Act shall be read as including references to these Regulations.

(7) Nothing in this regulation shall be taken to authorise a fire authority in Scotland to institute proceedings for any offence.

**Serious cases: offence**

11.—(1) A person shall be guilty of an offence if—

- (a) being under a requirement to do so, he fails to comply with any provision of the workplace fire precautions legislation; and
- (b) that failure places one or more employees at risk of death or serious injury in case of fire.

(2) Any person guilty of an offence under this regulation shall be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding two years, or both.

(2A) In any proceedings for an offence under this regulation it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(3) A person is not guilty of an offence under this regulation in respect of any failure to comply with the workplace fire precautions legislation which is the subject of an enforcement notice.

**Serious cases: prohibition notices**

12.—(1) Sections 10 to 10B of the 1971 Act<sup>(5)</sup> (special procedure in case of serious risk: prohibition notices) shall apply to—

- (a) tents and other movable structures (other than vessels);
- (b) places of work in the open air; and
- (c) vessels remaining moored or remaining on dry land, which are relevant workplaces.

(2) For the purposes of paragraph (1), a relevant workplace is a workplace other than an excepted workplace.

**Enforcement notices**

13.—(1) Where a fire authority are of the opinion that—

- (a) a person, being under an obligation to do so, has failed to comply with any provision of the workplace fire precautions legislation in respect of a workplace, or employees who work in a workplace, situated in the area for which they perform the functions of fire authority,

...

the authority may serve on that person a notice (in these Regulations referred to as “an enforcement notice”) which—

- (i) states that they are of that opinion and why;
- (ii) specifies what steps they consider are necessary to remedy that failure;
- (iii) requires that person to take steps to remedy the failure within such period from the date of service of the notice (not being less than 21 days) as may be specified in the notice; and

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(5) Section 10 was substituted, and sections 10A and 10B inserted, by section 9 of the Fire Safety and Safety of Places of Sport Act 1987 (c. 27).

- (iv) explains how, where, within what period and on what grounds an appeal may be brought against the enforcement notice.

(2) Where a fire authority are of the opinion that a person's failure to comply with the workplace fire precautions legislation also extends to a workplace, or employees who work in a workplace, situated outside the area for which they perform the functions of fire authority, the notice served by them under paragraph (1) may include requirements concerning that workplace or those employees; but before including any such requirements the authority shall consult the fire authority for the area in which the workplace is situated.

...

(5) Before serving an enforcement notice which would oblige a person to make an alteration to a building or structure, the fire authority shall consult—

- (a) such persons as they would have been required to consult under section 17 of the 1971 Act (duty of fire authorities to consult other authorities before requiring alterations to buildings) if the proposed enforcement notice had been an improvement notice proposed to be issued under section 9D of that Act<sup>(6)</sup>;
- (aa) in the case of a building or structure in England or Wales in relation to all or any part of which an initial notice given under section 47 of the Building Act 1984<sup>(7)</sup> is in force, the approved inspector who gave that initial notice;
- (ab) in the case of a workplace which is, includes or forms part of—
  - (i) a designated sports ground, or
  - (ii) a sports ground at which there is a regulated stand, the local authority, and in this subparagraph “sports ground”, “designated sports ground” and “local authority” have the same meaning as in the Safety of Sports Grounds Act 1975<sup>(8)</sup> and “regulated stand” has the same meaning as in the Fire Safety and Safety of Places of Sport Act 1987<sup>(9)</sup>; and
- (b) any other person whose consent to the alteration would be required by or under any enactment.

(6) Where an enforcement notice has been served—

- (a) the fire authority may withdraw the notice at any time before the end of the period specified in the notice; and
- (b) if an appeal against the notice is not pending, the fire authority may extend or further extend the period specified in the notice.

...

(8) Without prejudice to the power of the court to cancel or modify an enforcement notice under regulation 14, no failure on the part of a fire authority to consult under paragraph (2) or (5) shall make an enforcement notice void.

### **Enforcement notices: rights of appeal**

**14.—(1)** A person on whom an enforcement notice is served may, within 21 days from the day on which the enforcement notice is served, appeal to the court.

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<sup>(6)</sup> Section 9D of the 1971 Act was introduced, and section 17 of that Act was amended, by section 7 of the Fire Safety and Safety of Places of Sport Act 1987; section 17 was also amended by the Health and Safety at Work etc. Act 1974, section 78.

<sup>(7)</sup> 1984 c. 55.

<sup>(8)</sup> 1975 c. 52; see section 17(1).

<sup>(9)</sup> 1987 c. 27; see section 26(5).

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(2) On an appeal under this regulation the court may either cancel or affirm the enforcement notice, and, if it affirms it, may do so either in its original form or with such modifications as the court may in the circumstances think fit.

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(4) Where an appeal is brought under this regulation against an enforcement notice, the bringing of the appeal shall have the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal.

(5) In this regulation “the court” means—

- (a) in England and Wales, a magistrates' court acting for the petty sessions area in which any relevant workplace is situated; and
- (b) in Scotland, the sheriff within whose jurisdiction any relevant workplace is situated, and for this purpose a “relevant workplace” is a workplace in respect of which the enforcement notice was served, other than a workplace covered by the notice by virtue of regulation 13(2).

(6) An appeal to the sheriff under this regulation shall be by summary application.

#### **Enforcement notices: offence**

**15.—**(1) It is an offence for a person to contravene any requirement imposed by an enforcement notice.

(2) Any person guilty of an offence under paragraph (1) shall be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding two years, or both.

(3) In any proceedings for an offence under this regulation it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

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