

SCHEDULES

SCHEDULE 10

Section 106

PROVISIONS RELATING TO OFFENCES

Interpretation

- 1 In this Schedule—
- “offence” means an offence created by or under a relevant provision;
 - “relevant provision” means any of the relevant statutory provisions other than any provision made by the Nuclear Safeguards Act 2000.

Venue

- 2 (1) If an offence is committed in connection with any plant or substance, the offence may be treated as having been committed at the place where the plant or substance is for the time being.
- (2) Sub-paragraph (1) applies only if it is necessary to treat the offence as having been committed there for the purpose of conferring jurisdiction on any court to entertain proceedings for the offence.
- (3) In this paragraph—
- “plant” includes any machinery, equipment or appliance;
 - “substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.
- (4) This paragraph is subject to any provision made in nuclear regulations by virtue of section 74(5)(b) (treatment of offences as having been committed at a specified place).

Extension of time for bringing summary proceedings

- 3 (1) This paragraph applies where—
- (a) a special report on a matter is made under section 84(1);
 - (b) a report is made by a person holding an ONR inquiry;
 - (c) a coroner’s inquest is held into a relevant death; or
 - (d) a public inquiry under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 is held into a relevant death.
- (2) A “relevant death” is the death of any person which may have been caused—
- (a) by an accident which happened while at work,
 - (b) by a disease which the person contracted (or probably contracted) while at work, or
 - (c) by an accident, act or omission which occurred in connection with the work of any person.

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- (3) Sub-paragraph (4) applies if it appears from—
 - (a) the report mentioned in sub-paragraph (1)(a) or (b),
 - (b) the inquest mentioned in sub-paragraph (1)(c), or
 - (c) the proceedings at the inquiry mentioned in sub-paragraph (1)(d),
 that a relevant provision was contravened at a time which is material in relation to the subject-matter of the report, inquest or inquiry.
- (4) Summary proceedings against any person liable to be proceeded against in respect of the contravention may be commenced at any time within 3 months of—
 - (a) the making of the report in question, or
 - (b) (as the case may be) the conclusion of the inquest or inquiry.
- 4 (1) This paragraph applies to any offence that a person commits as a result of a provision or requirement that the person is subject to as the designer, manufacturer, importer or supplier of any thing.
- (2) Summary proceedings for the offence may be commenced at any time within 6 months from the date on which there comes to the knowledge of the ONR evidence that appears sufficient to the ONR—
 - (a) to justify a prosecution for the offence, or
 - (b) in relation to an offence in Scotland, to justify a report to the Lord Advocate with a view to consideration of the question for prosecution.
- (3) For this purpose—
 - (a) a certificate of the ONR stating that such evidence came to its knowledge on a specified date is to be taken as conclusive evidence of that fact,
 - (b) a document purporting to be such a certificate, and to be signed on behalf of the ONR, is to be presumed to be such a certificate unless the contrary is proved, and
 - (c) in relation to an offence in Scotland, section 136(3) of the Criminal Procedure (Scotland) Act 1995 (date of commencement of proceedings) has effect as it has effect for the purposes of that section.

Continuation of offences

- 5 (1) This paragraph applies where an offence is committed as a result of a failure to do something at or within a time fixed by or under a relevant provision.
- (2) The offence is to be deemed to continue until the thing is done.

Offences due to fault of other person

- 6 (1) A person (“A”) is guilty of an offence if—
 - (a) another person (“B”) commits the offence, and
 - (b) B’s commission of the offence is due to the act or default of A,
 and A is liable to be proceeded against and dealt with accordingly.
- (2) For this purpose it does not matter whether or not proceedings are taken against B.
- (3) A person (“A”) is guilty of an offence if—
 - (a) A is a person other than the Crown,

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- (b) the offence would have been committed by the Crown but for the fact that the provision under which the offence is committed does not bind the Crown, and
 - (c) the Crown's commission of the offence would have been due to the act or default of A,
- and A is liable to be proceeded against and dealt with accordingly.
- (4) This paragraph is subject to any provision made in nuclear regulations.

Offences by bodies corporate

- 7 (1) Where an offence committed by a body corporate is proved—
- (a) to have been committed with the consent or connivance of an officer of the body corporate, or
 - (b) to be attributable to neglect on the part of an officer of the body corporate, that officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.
- (2) In sub-paragraph (1) “officer”, in relation to a body corporate, means—
- (a) any director, manager, secretary or other similar officer of the body corporate, or
 - (b) any person purporting to act in any such capacity.
- (3) In sub-paragraph (2) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Offences by partnerships

- 8 (1) Proceedings for an offence alleged to have been committed by a partnership may be brought in the name of the partnership.
- (2) Rules of court relating to the service of documents have effect in relation to proceedings for an offence as if the partnership were a body corporate.
- (3) For the purposes of such proceedings the following provisions apply as they apply in relation to a body corporate—
- (a) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980, and
 - (b) section 18 of the Criminal Justice Act (Northern Ireland) 1945 and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 ([S.I. 1981/1675 \(N.I. 26\)](#)).
- (4) A fine imposed on a partnership on its conviction for an offence is to be paid out of the partnership assets.
- (5) Where an offence committed by a partnership is proved—
- (a) to have been committed with the consent or connivance of a partner, or
 - (b) to be attributable to neglect on the part of a partner,
- the partner (as well as the partnership) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.
- (6) In this paragraph “partner” includes a person purporting to act as a partner.

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Restriction on institution of proceedings in England and Wales

- 9 Proceedings for an offence in England and Wales may be instituted only—
- (a) by the ONR or an inspector, or
 - (b) by, or with the consent of, the Director of Public Prosecutions.

Prosecutions by inspectors in England and Wales

- 10 An inspector may prosecute proceedings for an offence before a magistrates' court in England and Wales if authorised to do so by the inspector's instrument of appointment (see paragraph 2 of Schedule 8).

Onus of proving limits of what is practicable etc

- 11 (1) This paragraph applies if regulations under this Part create an offence consisting of—
- (a) a failure to comply with a duty or requirement to do something so far as practicable (or reasonably practicable), or
 - (b) a failure to use the best means do something.
- (2) The regulations may provide that it is for the defendant to prove that—
- (a) it was not practicable (or reasonably practicable) to do more than was in fact done to satisfy the duty or requirement, or
 - (b) there was no better practicable means than was in fact used to satisfy the duty or requirement.

Evidence

- 12 (1) This paragraph applies where a requirement is imposed by a relevant provision for an entry to be made in any register or other record.
- (2) If the entry is made, it is—
- (a) admissible in evidence, or
 - (b) in Scotland, sufficient evidence of the facts stated in the entry, against the person by or on whose behalf the entry is made.
- (3) If the entry is not made, and the requirement relates to making the entry in respect of observance with a relevant provision, the fact that the entry is not made—
- (a) is admissible in evidence, or
 - (b) in Scotland, is sufficient evidence that the provision has not been observed.

Power of court to order cause of offence to be remedied

- 13 (1) This paragraph applies where—
- (a) a person ("P") is convicted of an offence, and
 - (b) it appears to the court that the matters in respect of which P is convicted are matters that are within P's power to remedy.
- (2) The court may (in addition to, or instead of, imposing any punishment) order P to take such steps as the order may specify for the purpose of remedying those matters.
- (3) The steps are to be taken within such time as may be fixed by the order ("the remedial period").

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- (4) The court may extend or further extend the remedial period on an application.
- (5) An application under sub-paragraph (4) must be made—
 - (a) before the end of the remedial period, or
 - (b) before the end of that period as extended on a previous application.
- (6) Where P is ordered to remedy any matters by an order under this paragraph—
 - (a) it is an offence for P to fail to comply with the order, but
 - (b) P is not liable under any relevant provision in respect of those matters to the extent that they continue during—
 - (i) the remedial period, or
 - (ii) any extension of that period granted under sub-paragraph (4).
- (7) A person who commits an offence under this paragraph is liable—
 - (a) on summary conviction—
 - (i) to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland),
 - (ii) to a fine (in England and Wales) or a fine not exceeding £20,000 (in Scotland or Northern Ireland), or
 - (iii) to both;
 - (b) on conviction on indictment—
 - (i) to imprisonment for a term not exceeding 2 years,
 - (ii) to a fine, or
 - (iii) to both.
- (8) In the application of sub-paragraph (7) to England and Wales in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's powers to imprison), the reference in sub-paragraph (7)(a)(i) to 12 months is to be read as a reference to 6 months.