

ORDINANCE  
OF THE STATES OF ALDERNEY

ENTITLED

**The Health and Safety at Work (Alderney) Ordinance, 2003**

\*

[CONSOLIDATED TEXT]

**NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from the Greffier, The Court of Alderney, Queen Elizabeth II Street, Alderney, GY9 3TB.*

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\* Alderney Ordinance No. XIII of 2003. This Ordinance is applied to certain types of work carried on by persons within the territorial waters of Alderney by the Renewable Energy (Alderney) Law, 2007 (No. XII of 2008). See also the Police Force (Bailiwick of Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207).

# ORDINANCE OF THE STATES OF ALDERNEY

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## **The Health and Safety at Work (Alderney) Ordinance, 2003**

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*(Made on 23rd July, 2003.)*

## **The Health and Safety at Work (Alderney) Ordinance, 2003**

**THE STATES**, in exercise of the powers conferred upon them by section 1 of the Health and Safety at Work (Alderney) Law, 1997<sup>a</sup>, hereby order: –

### PART I

#### GENERAL DUTIES OF EMPLOYERS, EMPLOYEES AND OTHERS

##### **General duties of employers to their employees.**

1. (1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

(2) Without prejudice to the generality of an employer's duty under subsection (1), the matters to which that duty extends include in particular –

- (a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health,
- (b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health, in connection with the use, handling, storage and transport of articles and substances,
- (c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of

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<sup>a</sup> Order in Council No. XXXI of 1997.

his employees,

- (d) so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks,
- (e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.

(3) It shall be the duty of every employer to prepare and as often as may be appropriate, revise a written statement of his general policy with respect to the health and safety at work of his employees and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all of his employees.

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**NOTE**

*The following cases have referred to this Ordinance:*

*Cyma Petroleum (CI) Ltd v. Chairman of the Policy & Finance Committee of the States of Alderney* (2006) (Unreported, Royal Court, 20th March) (Guernsey Judgment No 16/2006);

*Cyma Petroleum (CI) Limited v. Chairman of the Policy & Finance Committee of the States of Alderney* (2006) (Unreported, Court of Appeal, 12th December) (Guernsey Judgment No 57/2006).

*In accordance with the provisions of the Renewable Energy (Alderney) Law, 2007, section 5C(1), with effect from 30th March, 2013, this Ordinance shall, subject to section 5C(3) of the 2007 Law and to any exceptions that the States may by Ordinance provide, apply to and in relation to persons at work*

*(within the meaning of the 1997 Law) within the territorial waters of Alderney where such work is carried on in connection with the matters set out in the aforesaid section 5C.*

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**General duties of employers and self employed to persons other than their employees.**

2. (1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.

(2) It shall be the duty of every self-employed person to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health or safety.

(3) In such cases as may be prescribed, it shall be the duty of every employer and every self-employed person, in the prescribed circumstances and in the prescribed manner, to give to persons (not being his employees) who may be affected by the way in which he conducts his undertaking the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their health or safety.

**General duties of persons concerned with premises to persons other than their employees.**

3. (1) This section has effect for imposing on persons duties in relation to those who –

- (a) are not their employees, but
- (b) use non-domestic premises made available to them as a

place of work or as a place where they may use plant or substances provided for their use there,

and applies to premises so made available and other non-domestic premises used in connection with them.

(2) It shall be the duty of each person who has, to any extent, control of premises to which this section applies, or of the means of access thereto or egress therefrom, or of any plant or substance in such premises, to take such measures as it is reasonable for a person in his position to take to ensure, so far as is reasonably practicable, that the premises, all means of access thereto or egress therefrom available for use by persons using the premises, and any plant or substance in the premises or, as the case may be, provided for use there, is or are safe and without risks to health.

(3) Where a person has, by virtue of any contract or tenancy, an obligation of any extent in relation to –

- (a) the maintenance or repair of any premises to which this section applies or any means of access thereto or egress therefrom, or
- (b) the safety of or the absence of risks to health arising from plant or substances in any such premises,

that person shall be treated, for the purposes of subsection (2), as being a person who has control of the matters to which his obligation extends.

(4) Any reference in this section to a person having control of any premises or matter is a reference to a person having control of the premises or matter in connection with the carrying on by him of a trade, business or other undertaking

(whether for profit or not).

**General duty of persons in control of certain premises in relation to harmful emissions into atmosphere.**

4. (1) This section applies to the following premises, that is to say –

- (a) any factory, growing property or quarry, and
- (b) any premises at which there is installed any plant capable of producing or emitting ionising radiations.

(2) It shall be the duty of the person having control of any premises to which this section applies to use the best practicable means for preventing the emission into the atmosphere from the premises of noxious or offensive substances and for rendering harmless and inoffensive such substances as may be so emitted.

(3) The reference in subsection (2) to the means to be used for the purposes there mentioned includes a reference to the manner in which the plant provided for those purposes is used and to the supervision of any operation involving the emission of the substances to which that subsection applies.

(4) Any substance shall be a noxious or, as the case may be, an offensive substance for the purposes of this Ordinance whether or not it would be so apart from this subsection.

(5) The reference in subsection (2) to a person having control of any premises is a reference to a person having control of the premises in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not) and any duty imposed on any such person by that subsection shall extend only to matters within his control.

**General duties of manufacturers etc. as regards articles and substances for use at work.**

5. (1) It shall be the duty of any person who designs, manufactures, imports or supplies any article for use at work or any article of fairground equipment

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- (a) to ensure, so far as is reasonably practicable, that the article is so designed and constructed that it will be safe and without risks to health at all times when it is being set, used, cleaned or maintained by a person at work,
- (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by paragraph (a),
- (c) to take such steps as are necessary to secure that persons supplied by that person with the article are provided with adequate information about the use for which the article is designed or has been tested, and about any conditions necessary to ensure that it will be safe and without risks to health at all such times as are mentioned in paragraph (a) and when it is being dismantled or disposed of, and
- (d) to take such steps as are necessary to secure, so far as is reasonably practicable, that persons so supplied are provided with all such revisions of information provided to them by virtue of paragraph (c) as are necessary by reason of its becoming known that

anything gives rise to a serious risk to health or safety.

(2) It shall be the duty of any person who designs, manufactures, imports or supplies any article of fairground equipment –

- (a) to ensure, so far as is reasonably practicable, that the article is so designed and constructed that it will be safe and without risks to health at all times when it is being used for or in connection with the entertainment of members of the public,
- (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by paragraph (a),
- (c) to take such steps as are necessary to secure that persons supplied by that person with the article are provided with adequate information about the use for which the article is designed or has been tested and about any conditions necessary to ensure that it will be safe and without risks to health at all times when it is being used for or in connection with the entertainment of members of the public, and
- (d) to take such steps as are necessary to secure, so far as is reasonably practicable, that persons so supplied are provided with all such revisions of information provided to them by virtue of paragraph (c) as are necessary by reason of its becoming known that anything gives rise to a serious risk to health or safety.

(3) It shall be the duty of any person who undertakes the design or manufacture of any article for use at work or of any article of fairground equipment to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of any risks to health or safety to which the design or article may give rise.

(4) It shall be the duty of any person who erects or installs any article for use at work in any premises, where that article is to be used by persons at work, or who erects or installs any article of fairground equipment, to ensure, so far as is reasonably practicable, that nothing about the way in which the article is erected or installed makes it unsafe or a risk to health at any such time as is mentioned in subsection (1)(a) or, as the case may be, in subsection (2)(a).

(5) It shall be the duty of any person who manufactures, imports or supplies any substance –

- (a) to ensure, so far as is reasonably practicable, that the substance will be safe and without risks to health at all times when it is being used, handled, processed, stored or transported by a person at work or in premises to which section 3 applies,
- (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by paragraph (a),
- (c) to take such steps as are necessary to secure that persons supplied by that person with the substance are provided with adequate information about any risks to

health or safety to which the inherent properties of the substance may give rise, about the results of any relevant tests which have been carried out on, or in connection with, the substance and about any conditions necessary to ensure that the substance will be safe and without risks to health at all such times as are mentioned in paragraph (a) and when the substance is being disposed of, and

- (d) to take such steps as are necessary to secure, so far as is reasonably practicable, that persons so supplied are provided with all such revisions of information provided to them by virtue of paragraph (c) as are necessary by reason of its becoming known that anything gives rise to a serious risk to health or safety.

(6) It shall be the duty of any person who undertakes the manufacture of any substance to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of any risks to health or safety to which the substance may give rise at all such times as are mentioned in subsection (5)(a).

(7) Nothing in the preceding provisions of this section shall be taken to require a person to repeat any testing, examination or research which has been carried out otherwise than by him or at his instance, in so far as it is reasonable for him to rely on the results thereof for the purposes of those provisions.

(8) Any duty imposed on any person by any of the preceding provisions of this section shall extend only to things done in the course of a trade, business or other undertaking carried on by him (whether for profit or not) and to matters within his control.

(9) Where a person designs, manufactures, imports or supplies an article for use at work or an article of fairground equipment and does so for or to another on the basis of a written undertaking by that other to take specified steps sufficient to ensure, so far as is reasonably practicable, that the article will be safe and without risks to health at all such times as are mentioned in subsection (1)(a) or (2)(a), the undertaking shall have the effect of relieving the first-mentioned person from the duty imposed by virtue of that subsection to such extent as is reasonable having regard to the terms of the undertaking.

(10) Nothing in subsection (8) or (9) shall relieve any person who imports any article or substance from any duty in respect of anything which –

- (a) in the case of an article designed outside the Island, was done by and in the course of any trade, profession or other undertaking carried on by, or was within the control of, the person who designed the article, or
- (b) in the case of an article or substance manufactured outside the Island, was done by and in the course of any trade, profession or other undertaking carried on by, or was within the control of, the person who manufactured the article or substance.

(11) Where a person ("**the ostensible supplier**") supplies any article or substance to another ("**the customer**") under a hire-purchase agreement, conditional sale agreement or credit-sale agreement, and the ostensible supplier –

- (a) carries on the business of financing the acquisition of goods by others by means of such agreements, and

- (b) in the course of that business acquired his interest in the article or substance supplied to the customer as a means of financing its acquisition by the customer from a third person ("**the effective supplier**"),

the effective supplier and not the ostensible supplier shall be treated for the purposes of this section as supplying the article or substance to the customer, and any duty imposed by the preceding provisions of this section on suppliers shall accordingly fall on the effective supplier and not on the ostensible supplier.

(12) For the purposes of this section an absence of safety or a risk to health shall be disregarded in so far as the case in or in relation to which it would arise is shown to be one the occurrence of which could not reasonably be foreseen; and in determining whether any duty imposed by virtue of subsection (1)(a), (2)(a) or (5)(a) has been performed regard shall be had to any relevant information or advice which has been provided to any person by the person by whom the article has been designed, manufactured, imported or supplied or, as the case may be, by the person by whom the substance has been manufactured, imported or supplied.

**General duties of employees at work.**

- 6. It shall be the duty of every employee while at work –
  - (a) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work, and
  - (b) as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.

**Duty not to interfere with, or misuse things provided pursuant to certain provisions.**

7. No person shall intentionally or recklessly interfere with or misuse anything provided in the interests of health, safety or welfare in pursuance of any of the relevant statutory provisions.

**Duty not to charge employees for things done or provided pursuant to certain specific requirements.**

8. No employer shall levy or permit to be levied on any employee of his any charge in respect of anything done or provided in pursuance of any specific requirement of the relevant statutory provisions.

**Notification and reporting of injuries, diseases and dangerous occurrences.**

9. (1) Subject to section 11, where any person as a result of an accident arising out of or in connection with work, dies or suffers any of the injuries or conditions specified in subsection (2) or where there is a dangerous occurrence, the responsible person shall –

- (a) forthwith notify the Committee thereof by the quickest practicable means, and
- (b) within 7 days send a report thereof to the Committee on a form approved for the purposes of this section.

(2) The injuries and conditions referred to in subsection (1) are –

- (a) fracture of the skull, spine or pelvis,
- (b) fracture of any bone –

*Consolidated text*

- (i) in the arm or wrist, but not a bone in the hand,  
or
  - (ii) in the leg or ankle, but not a bone in the foot,
- (c) amputation of –
- (i) a hand or foot, or
  - (ii) a finger, thumb or toe, or any part thereof if the  
joint or bone is completely severed,
- (d) the loss of sight of an eye, a penetrating injury to an  
eye, or a chemical or hot metal burn to an eye,
- (e) either injury (including burns) requiring immediate  
medical treatment, or loss of consciousness, resulting in  
either case from an electric shock from any electrical  
circuit or equipment, whether or not due to direct  
contact,
- (f) loss of consciousness resulting from lack of oxygen,
- (g) decompression sickness requiring immediate medical  
treatment,
- (h) either acute illness requiring medical treatment, or loss  
of consciousness, resulting in either case from the  
absorption of any substance by inhalation, ingestion or  
through the skin,

*Consolidated text*

- (i) acute illness requiring medical treatment where there is reason to believe that this resulted from exposure to a pathogen or infected material,
- (j) any other injury which results in the person injured being admitted immediately into hospital for more than 24 hours.

(3) Subject to section 11, where a person at work is incapacitated for work of a kind which he might reasonably be expected to do, either under his contract of employment, or, if there is no such contract, in the normal course of his work, for more than 3 consecutive days (excluding the day of the accident but including any days which would not have been working days) because of an injury (other than one specified in subsection (2)) resulting from an accident at work the responsible person shall within 7 days of the accident send a report thereof to the Committee on a form approved for the purposes of this section.

(4) Subject to section 11, where an employee, as a result of an accident at work, has suffered an injury or condition reportable under subsection (1) which is a cause of his death within one year of the date of that accident, the employer shall inform the Committee in writing of the death as soon as it comes to his knowledge, whether or not the accident has been reported under subsection (1).

(5) Subject to subsections (6) and (7) and to section 11, where a person at work suffers from a disease prescribed by regulations made by the Committee and his work involves an activity specified in such regulations the responsible person shall forthwith send a report thereof to the Committee on a form approved for the purposes of this section.

(6) Subsection (5) shall apply only if –

- (a) in the case of an employee or a person undergoing training, the responsible person has received a written statement prepared by a registered medical practitioner diagnosing the disease as one prescribed under subsection (5),
- (b) in the case of a self-employed person, that person has been informed by a registered medical practitioner that he is suffering from a disease so prescribed.

(7) In the case of a self-employed person, it shall be a sufficient compliance with subsection (5) if that person makes arrangements for the report to be sent to the Committee by some other person.

**Records.**

**10.** (1) The responsible person shall keep a record of –

- (a) any event which is required to be reported under section 9(1), (2) and (3), which shall contain the particulars specified in Part I of Schedule 1, and
- (b) any case of disease required to be reported under section 9(5), which shall contain the particulars specified in Part II of Schedule 1.

(2) Any record of deaths or injuries at work which an employer is required to keep by virtue of any other enactment shall, if it covers the injuries recordable under this Ordinance or any regulations made hereunder and includes the particulars specified in Schedule 1, be sufficient for the requirements of subsection (1)(a).

(3) The records referred to in subsection (1) shall be kept at the place where the work to which they relate is carried on or, if this is not reasonably practicable, at the usual place of business of the responsible person and an entry in either of such records shall be kept for at least 3 years from the date on which it was made.

(4) The responsible person shall send to the Committee such extracts from the records required to be kept under subsection (1) as the Committee may from time to time require.

(5) The provisions of Part III of Schedule 1 (which contains provisions relating to quarries) shall have effect.

(6) The Committee may by notice in writing served on any person who has furnished a report under section 9(1), (2), (3), (5), (6) or (7), require that person to give to the Committee in an approved form such of the information specified in Part IV of Schedule 1 as may be specified in the notice within such time as may be specified in that notice.

(7) It shall be a defence in proceedings against any person for an offence under this section for that person to prove that he was not aware of the event requiring him to notify or send a report to the Committee and that he had taken all reasonable steps to have all such events brought to his notice.

**Restrictions as to the application of section 9.**

**11.** (1) The requirements of section 9(1), (2), (3), (5), (6) and (7) relating to any death, injury or condition shall not apply to a patient when undergoing treatment in a hospital or in the surgery of a registered medical or dental practitioner.

(2) The requirements of section 9(1), (2), (3) and (4) relating to the death, injury or condition of a person as a result of an accident, shall apply to an

accident arising out of or in connection with the movement of a vehicle on a road only if that person –

- (a) was killed or suffered an injury or condition as a result of exposure to a substance being conveyed by the vehicle, or
- (b) was either himself engaged in, or was killed or suffered an injury or condition as a result of the activities of another person who was at the time of the accident engaged in, work connected with the loading or unloading of any article or substance onto or off the vehicle, or
- (c) was either himself engaged in, or was killed or suffered an injury or condition as a result of the activities of another person who was at the time of the accident engaged in, work on or alongside a road, being work concerned with the construction, demolition, alteration, repair or maintenance of –
  - (i) the road or the markings or equipment thereon,
  - (ii) the verges, fences, hedges or other boundaries of the road,
  - (iii) pipes or cables on, under, over or adjacent to the road, or
  - (iv) buildings or structures adjacent to or over the road.

(3) Section 9(1)(a) shall not apply to a self-employed person who is injured at premises of which he is the owner or occupier, but section 9(1)(b) shall apply to such a self-employed person (other than in the case of death) and it shall be sufficient compliance with that section if that self-employed person makes arrangements for the report to be sent to the Committee by some other person.

**Power of the Committee to direct investigations.**

12. (1) This section applies to the following matters, that is to say, any accident, occurrence, situation or other matter whatsoever which the Committee thinks it necessary or expedient to investigate for the purposes of any of the relevant statutory provisions or with a view to the making of any Ordinance under the Law.

(2) The Committee may at any time appoint any person to hold an investigation into any matter to which this section applies and to make a report thereon to the Committee, and may appoint any other person possessing legal or special knowledge to act as assessor in holding the investigation.

(3) The person or persons so appointed (referred to in this section as "**the Investigation Committee**") shall hold the investigation in such manner and under such conditions as the Investigation Committee may think most effectual for the purposes of the investigation, and for enabling the Investigation Committee to make its report to the Committee.

(4) The Investigation Committee shall have, for the purposes of the investigation, all the powers of an inspector under this Ordinance, and, in addition, power –

- (a) to enter and inspect any premises the entry or inspection whereof appears to the Investigation Committee requisite for the said purposes,

- (b) to require the production of all books, papers and documents which it considers important for the said purposes.

(5) The Committee may cause the report of the Investigation Committee, or so much thereof as the Committee thinks fit, to be made public at such time and in such manner as the Committee thinks fit.

## PART II

### APPROVED CODES OF PRACTICE

#### **Approval of codes of practice by the Committee.**

**13.** (1) Subject to the next following subsection, for the purpose of providing practical guidance with respect to the requirements of any of the relevant statutory provisions, the Committee may –

- (a) approve and issue such codes of practice (whether prepared by it or not) as in its opinion are suitable for that purpose,
- (b) approve such codes of practice issued or proposed to be issued otherwise than by the Committee as in its opinion are suitable for that purpose.

(2) The Committee shall, before approving a code of practice under subsection (1), consult any other States committee or other body that appears to the Committee to be appropriate.

(3) Where a code of practice is approved by the Committee under subsection (1), the Committee shall issue a notice in writing –

- (a) identifying the code in question and stating the date on which its approval by the Committee is to take effect, and
  - (b) specifying for which of the provisions mentioned in the said subsection (1) the code is approved.
- (4) The Committee may –
- (a) from time to time revise the whole or any part of any code of practice prepared by it in pursuance of this section,
  - (b) approve any revision or proposed revision of the whole or any part of any code of practice for the time being approved under this section,

and the provisions of subsections (2) and (3) shall, with the necessary modifications, apply in relation to the approval of any revision under this subsection as they apply in relation to the approval of a code of practice under subsection (1).

(5) The Committee may at any time withdraw its approval from any code of practice approved under this section, but before withdrawing such approval shall consult the same States committees and other bodies as it would be required to consult under subsection (2) if it were proposing to approve the code.

(6) Where under subsection (5) the Committee withdraws its approval from a code of practice approved under this section, the Committee shall issue a notice in writing identifying the code in question and stating the date on which its approval of it is to cease to have effect.

(7) References in this Ordinance to an approved code of practice are references to that code as it has effect for the time being by virtue of any revision of the whole or any part of it approved under this section.

(8) The power of the Committee under subsection (1)(b) to approve a code of practice issued or proposed to be issued otherwise than by the Committee shall include power to approve a part of such a code of practice; and accordingly in this Ordinance "**code of practice**" may be read as including a part of such a code of practice.

**Use of the approved codes of practice in criminal proceedings.**

**14.** (1) A failure on the part of any person to observe any provision of an approved code of practice shall not of itself render him liable to any civil or criminal proceedings; but where in any criminal proceedings a party is alleged to have committed an offence by reason of a contravention of any requirement or prohibition imposed by or under any such provision as is mentioned in section 13(1), being a provision for which there was an approved code of practice at the time of the alleged contravention, subsection (2) shall have effect with respect to that code in relation to those proceedings.

(2) Any provision of the code of practice which appears to the Court to be relevant to the requirement or prohibition alleged to have been contravened shall be admissible in evidence in the proceedings; and if it is proved that there was at any material time a failure to observe any provision of the code which appears to the Court to be relevant to any matter which it is necessary for the prosecution to prove in order to establish a contravention of that requirement or prohibition, that matter shall be taken as proved unless the Court is satisfied that the requirement or prohibition was in respect of that matter complied with otherwise than by way of observance of that provision of the code.

- (3) In any criminal proceedings –
- (a) a document purporting to be a notice issued by the Committee under section 13 shall be taken to be such a notice unless the contrary is proved, and
  - (b) a code of practice which appears to the Court to be the subject of such a notice shall be taken to be the subject of that notice unless the contrary is proved.

PART III  
ENFORCEMENT, ETC.

**Appointment of inspectors.**

15. (1) The Committee may appoint as inspectors (under whatever title it may from time to time determine) such persons having suitable qualifications as it thinks necessary for carrying into effect the relevant statutory provisions, and may terminate any appointment made under this section.

(2) Every appointment of a person as an inspector under this section shall be made by an instrument in writing, and the inspector shall, if so required when exercising or seeking to exercise any power conferred on him by any of the relevant statutory provisions, produce his instrument of appointment or a duly authenticated copy thereof.

(3) Without prejudice to the generality of the foregoing, a person appointed as an inspector under this section may be a person employed in the Guernsey public service.

**Powers of inspectors.**

16. (1) Subject to the provisions of this section, an inspector may, for

the purpose of carrying into effect any of the relevant statutory provisions, exercise the powers set out in subsection (2).

(2) The powers of an inspector referred to in subsection (1) are the following, namely –

- (a) at any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time) to enter any premises which he has reason to believe it is necessary for him to enter for the purpose of carrying into effect any of the relevant statutory provisions,
- (b) to take with him an officer of police, if he has reasonable cause to apprehend any serious obstruction in the execution of his duty,
- (c) without prejudice to paragraph (b), on entering any premises by virtue of paragraph (a) to take with him –
  - (i) any other person duly authorised in that behalf by the Committee, and
  - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised,
- (d) to make such examination and investigation as may in any circumstances be necessary for the purpose of carrying into effect any of the relevant statutory provisions,

*Consolidated text*

- (e) as regards any premises which he has power to enter to direct that those premises or any part of them, or anything therein, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (d),
- (f) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (d),
- (g) to take samples of any articles or substances found in any premises which he has power to enter, and of the atmosphere in or in the vicinity of any such premises,
- (h) in the case of any article or substance found in any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause danger to health or safety, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is in the circumstances necessary for the purpose of carrying into effect any of the relevant statutory provisions),
- (i) in the case of any such article or substance as is mentioned in paragraph (h), to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely –
  - (i) to examine it and do to it anything which he has

power to do under paragraph (h),

- (ii) to ensure that it is not tampered with before his examination of it is completed,
  - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under any of the relevant statutory provisions or any proceedings relating to a notice under section 18 or 19,
- (j) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (d) to answer (in the absence of persons other than a person nominated by him to be present and any persons 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,
- (k) to require the production of, inspect, and take copies of or of any entry in –
- (i) any books or documents which by virtue of any of the relevant statutory provisions are required to be kept, and
  - (ii) any other books or documents which it is necessary for him to see for the purposes of any examination or investigation under paragraph (d),

- (l) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control, or in relation to which that person has responsibilities, as are necessary to enable the inspector to exercise any of the powers conferred on him by this section,
- (m) any other power which is necessary for the purpose of carrying into effect any of the relevant statutory provisions.

(3) Where an inspector proposes to exercise the power conferred by subsection (2)(h) in the case of an article or substance found in any premises, he shall, if so requested by a person who at the time is present in and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person, unless the inspector considers that its being done in that person's presence would be prejudicial to public safety.

(4) Before exercising the power conferred by subsection (2)(h) in the case of any article or substance, an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power.

(5) Where under the power conferred by subsection (2)(i) an inspector takes possession of any article or substance found in any premises, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and before taking possession of any such substance under that power an inspector shall, if it is practicable for him to do so, take a sample thereof and give to a responsible

person at the premises a portion of the sample marked in a manner sufficient to identify it.

(6) No answer given by a person in pursuance of a requirement imposed under subsection (2)(j) shall be admissible in evidence against that person or the husband or wife of that person in any proceedings.

(7) Nothing in this section shall be taken to compel the production by any person of a document of which he would, on grounds of legal professional privilege, be entitled to withhold production in any action in the Court.

**Provisions as to samples.**

**17.** (1) An inspector taking a sample from any premises under section 16 with the intention of having it analysed shall, if practicable –

- (a) forthwith after taking the sample give information of his intention to a responsible person at those premises, and
- (b) then and there divide the sample into parts, each part to be marked and sealed or fastened up, in such manner as its nature will permit and –
  - (i) if required so to do by the person so informed, deliver one part to him,
  - (ii) retain one part for future comparison, and
  - (iii) if the inspector thinks fit to have an analysis made, submit one part to an authorised analyst.

(2) Where it is not practicable for the inspector to give information of his intention as mentioned in subsection (1), the inspector shall, if he intends to have the sample analysed and if he can ascertain the name and address of any person who has responsibilities in relation to the premises from which the sample was taken, 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.

(3) A document purporting to be a certificate by an authorised analyst as to the result of an analysis of a sample shall in proceedings under any of the relevant statutory provisions be admissible as evidence of the matters stated therein, but either party may require the analyst to be called as witness.

(4) In any proceedings under any of the relevant statutory provisions in which it is intended to rely on evidence relating to a sample taken under this section –

- (a) the summons shall not be made returnable less than 14 days from the day on which it was served, and a copy of any certificate of analysis relating to such sample shall be served with the summons,
- (b) the part of the sample retained by the inspector for future comparison shall be produced at the hearing.

**Improvement notices.**

**18.** If the inspector is of the opinion that a person –

- (a) is contravening one or more of the relevant statutory provisions, or
- (b) has contravened one or more of those provisions in

circumstances that make it likely that the contravention will continue or be repeated,

the inspector may serve on that person a notice (referred to in this Ordinance as "**an improvement notice**") which shall –

- (i) state that he is of that opinion,
- (ii) specify the provision or provisions as to which he is of that opinion,
- (iii) give particulars of the reasons why he is of that opinion, and
- (iv) require that person to remedy the contravention or, as the case may be, the matters occasioning the contravention within such period (ending not earlier than the period within which an appeal against the notice can be brought under section 21) as may be specified in the notice.

**Prohibition notices.**

**19.** (1) This section applies to any activities which are being, or are likely to be, carried on by or under the control of any person, being activities to or in relation to which any of the relevant statutory provisions apply or will, if the activities are so carried on, apply.

(2) If as regards any activities to which this section applies an inspector is of the opinion that, as carried on, or likely to be carried on, by or under the control of the person in question, the activities involve or, as the case may be, will involve a risk of serious personal injury, the inspector may serve on that person a

notice (in this Ordinance referred to as "**a prohibition notice**").

- (3) A prohibition notice shall –
  - (a) state that the inspector is of the said opinion,
  - (b) specify the matters which in his opinion give or, as the case may be, will give rise to the said risk,
  - (c) where in his opinion any of those matters involves or, as the case may be, will involve a contravention of any of the relevant statutory provisions –
    - (i) state that he is of that opinion,
    - (ii) specify the provision or provisions as to which he is of that opinion, and
    - (iii) give particulars of the reasons why he is of that opinion, and
  - (d) direct that the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice in pursuance of paragraph (b) and any associated contraventions of provisions so specified in pursuance of paragraph (c) have been remedied.

(4) Subject to the provisions of subsection (5), a direction contained in a prohibition notice in pursuance of subsection (3)(d) or of section 20

shall not take effect unless it is confirmed by the Committee by a notice served by the Committee on the person on whom the prohibition notice containing the direction has been served; and in that event the direction shall have effect –

- (a) at the end of the period specified by the Committee in the notice under this subsection, and
- (b) subject to such modifications, if any, as the Committee thinks fit and states in that notice.

(5) A direction given in pursuance of subsection (3)(d) shall take immediate effect if the inspector is of the opinion, and states it in the prohibition notice containing the direction, that the risk of serious personal injury is or, as the case may be, will be imminent, but the direction shall cease to have effect at the expiration of the 72 hours next following the day on which the prohibition notice was served unless it is confirmed by the Committee by a notice previously served by the Committee under and in accordance with the provisions of subsection (4).

**Provisions supplementary to section 18 and section 19.**

**20.** (1) An improvement notice or a prohibition notice may include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates; and any such directions –

- (a) may be framed to any extent by reference to any approved code of practice, and
- (b) may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.

(2) Where any of the relevant statutory provisions applies to a

building or any matter connected with a building and the inspector proposes to serve an improvement notice relating to a contravention of that provision in connection with that building or matter, the notice shall not direct any measures to be taken to remedy the contravention of that provision which are more onerous than those necessary to secure conformity with the requirements of any building regulations for the time being in force to which that building or matter would be required to conform if the relevant building were being newly erected, unless the provision in question imposes specific requirements more onerous than the requirements of any such building regulations to which the building or matter would be required to conform as aforesaid.

(3) In subsection (2) "**the relevant building**", in the case of a building, means that building, and, in the case of a matter connected with a building, means the building with which the matter is connected.

(4) Before there is served in connection with any premises used or about to be used as a place of work an improvement notice or a notice under section 19(4) requiring or likely to lead to the taking of measures affecting the means of escape in case of fire with which the premises are or ought to be provided, the inspector shall consult the Chief Fire Officer of the States of Guernsey; and the expression "**the Chief Fire Officer**" has the meaning given by section 27(1) of the Fire Services (Guernsey) Law, 1989<sup>b</sup>.

(5) Where an improvement notice or a prohibition notice as confirmed by the Committee under section 19(4) is not to take immediate effect –

- (a) the inspector may withdraw the notice at any time before the end of the period specified therein in pursuance of section 18 or section 19(4), as the case

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<sup>b</sup> Ordres en Conseil Vol. XXXI, p. 432.

may be, and

- (b) the period so specified may be extended or further extended by the inspector at any time when an appeal against the notice is not pending.

**Appeal against improvement or prohibition notice.**

**21.** (1) In this section "**a notice**" means an improvement notice or a prohibition notice as confirmed by the Committee under section 19(4).

(2) A person on whom a notice is served may, within a period of 28 days immediately following the date of the notice, appeal therefrom to the Court on the grounds that the requirement or direction contained in the notice is ultra vires or an unreasonable exercise of the inspector's or (as the case may be) the Committee's powers.

(3) An appeal under this section shall be instituted by way of summons which shall be served on the Chairman of the Committee and which shall set out the material facts on which the appellant relies.

(4) On an appeal under this section the appellant shall have the burden of proof and the final right of reply.

(5) Where an appeal under this section is brought against a notice within the period allowed under subsection (2) then –

- (a) in the case of an improvement 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,

- (b) in the case of a prohibition notice, the bringing of the appeal shall have the like effect if, but only if, on the application of the appellant, the Court so directs (and then only from the giving of the direction).

(6) The decision of the Court in any proceedings brought under this section shall be final, subject to an appeal on a point of law to the Ordinary Division of the Royal Court of Guernsey.

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**NOTE**

*The following cases have referred to section 21:*

*Cyma Petroleum (CI) Limited v. Chairman of the Policy & Finance Committee of the States of Alderney* (2006) (Unreported, Royal Court, 20th March) (Guernsey Judgment No 16/2006);

*Cyma Petroleum (CI) Limited v. Chairman of the Policy & Finance Committee of the States of Alderney* (2006) (Unreported, Court of Appeal, 12th December) (Guernsey Judgment No 57/2006).

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**Power to deal with cause of imminent danger.**

22. (1) Where, in the case of any article or substance found by him in any premises which he has power to enter, an inspector has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger or serious personal injury, he may seize it and cause it to be rendered harmless (whether by destruction or otherwise).

(2) Before there is rendered harmless under this section –

- (a) any article that forms part of a batch of similar articles,  
or

- (b) any substance,

the inspector shall, if it is practicable for him to do so, take a sample thereof and give to a responsible person at the premises where the article or substance was found by him a portion of the sample marked in a manner sufficient to identify it.

(3) As soon as may be after any article or substance has been seized and rendered harmless under this section, the inspector shall prepare and sign a written report giving particulars of the circumstances in which the article or substance was seized and so dealt with by him, and shall –

- (a) give a signed copy of the report to a responsible person at the premises where the article or substance was found by him, and
- (b) unless that person is the owner of the article or substance, also serve a signed copy of the report on the owner,

and if, where paragraph (b) applies, the inspector cannot after reasonable enquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under paragraph (a).

**Obtaining of information by the Committee.**

23. For the purpose of obtaining any information which the Committee needs for the discharge of its functions under any of the relevant statutory provisions, the Committee may serve on any person a notice requiring that person to furnish to the Committee such information about such matters as may be specified in the notice, and to do so in such form and manner and within such time as may be so specified.

**Restrictions on disclosure of information.**

24. (1) In this and in subsections (2) and (3) –

- (a) **"relevant information"** means information obtained by a person under section 23 or furnished to any person in pursuance of a requirement imposed by any of the relevant statutory provisions, and
- (b) **"the recipient"**, in relation to any relevant information, means the person by whom that information was so obtained or to whom that information was so furnished, as the case may be.

(2) Subject to subsection (3), no relevant information shall be disclosed without the consent of the person by whom it was furnished.

(3) Subsection (2) shall not apply to –

- (a) disclosure of information to the Committee or any other States committee,
- (b) without prejudice to paragraph (a), disclosure by the recipient of information to any person for the purpose of any function conferred on the recipient by or under any of the relevant statutory provisions,
- (c) without prejudice to paragraph (a), disclosure by the recipient of information to an officer of police authorised by the Chief Officer of Police to receive it,
- (d) disclosure by the recipient of information in a form calculated to prevent it from being identified as relating

to a particular person or case,

- (e) disclosure of information for the purposes of any legal proceedings or any investigation held by virtue of section 12 or for the purposes of a report of any such proceedings or investigation.

(4) In subsection (3) any reference to the Committee or any other States committee includes respectively a reference to an officer of the Committee (including an inspector), and to an officer of any other such committee.

(5) A person to whom information is disclosed in pursuance of subsection (3)(a) or (3)(b) shall not use the information for a purpose other than a purpose of the Committee or other States committee in question, or in connection with the relevant statutory provisions, as the case may be.

(6) A person shall not disclose any information obtained by him as a result of the exercise of any power conferred under section 12 or section 16 (including, in particular, any information in respect of any trade secret obtained by him in any premises entered by him by virtue of any such power) except –

- (a) for the purposes of his function, or
- (b) for the purposes of any legal proceedings or any investigation held by virtue of section 12 or for the purposes of a report of any such proceedings or investigation, or
- (c) with the consent, in the case of information furnished in pursuance of a requirement imposed under section 16, of the person who furnished it, and, in any other case,

the consent of a person having responsibilities in relation to the premises where the information was obtained.

(7) Notwithstanding anything in subsection (6), an inspector shall, in circumstances in which it is necessary to do so for the purpose of assisting in keeping persons employed at any premises adequately informed about matters affecting their health, safety and welfare, give to such persons or their representatives the following descriptions of information, that is to say –

- (a) factual information obtained by him as mentioned in subsection (6) which relates to those premises or anything which was or is therein or was or is being done therein, and
- (b) information with respect to any action which he has taken or proposes to take in or in connection with those premises in the performance of his functions,

and where an inspector does as aforesaid, he shall give the like information to the employer of the first-mentioned persons.

(8) Notwithstanding anything in subsections (6) and (7), a person who has obtained such information as is referred to in those subsections may furnish to a person who appears to him to be likely to be a party to any civil proceedings arising out of any accident, occurrence, situation or other matter, a written statement of relevant facts observed by him in the course of exercising any of the powers referred to in those subsections.

#### PART IV PROVISIONS AS TO OFFENCES

**Offences.**

25. (1) It shall be an offence for a person –
- (a) to fail to discharge a duty to which he is subject by virtue of sections 1 to 6,
  - (b) to contravene sections 7, 8, 9(i) or 10,
  - (c) to contravene any requirement imposed by virtue of section 12 by a person appointed under that section to hold an investigation or intentionally to obstruct any such person in the exercise of his powers under that section,
  - (d) to contravene any requirement imposed by an inspector under section 16 or section 22,
  - (e) to prevent or attempt to prevent any other person from appearing before an inspector or from answering any question to which an inspector may by virtue of section 16(2) require an answer,
  - (f) to contravene any requirement or prohibition, imposed by an improvement notice or a prohibition notice (including any such notice as modified on appeal),
  - (g) intentionally to obstruct an inspector in the exercise or performance of his powers or duties,
  - (h) to contravene any requirement imposed by a notice

under section 23,

- (i) to use or disclose any information in contravention of section 24(2), (5) or (6),
- (j) to make a statement which he knows to be false or recklessly to make a statement which is false where the statement is made –
  - (i) in purported compliance with a requirement to furnish any information imposed by or under any of the relevant statutory provisions, or
  - (ii) for the purpose of obtaining the issue of a document under any of the relevant statutory provisions to himself or another person,
- (k) intentionally to make a false entry in any register, book, notice or other document required by or under any of the relevant statutory provisions to be kept, served or given or, with intent to deceive, to make use of any such entry which he knows to be false,
- (l) with intent to deceive, to forge or use a document issued or authorised to be issued under any of the relevant statutory provisions or required for any purpose thereunder or to make or have in his possession a document so closely resembling any such document as to be calculated to deceive,
- (m) falsely to pretend to be an inspector,

- (n) to fail to comply with an order made by the Court under section 29.

(2) A person guilty of an offence under subsection (1)(c), (1)(e), (1)(g) or (1)(m), or of an offence under subsection (1)(d) consisting of contravening a requirement imposed by an inspector under section 16, shall be liable, on summary conviction, to a fine not exceeding level 5 on the Alderney uniform scale.

(3) A person guilty of an offence under any paragraph of subsection (1) not mentioned in subsection (2), or of an offence under subsection (1)(d) not falling within subsection (2), shall be liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the Alderney uniform scale,

- (b) on conviction on indictment –

- (i) if the offence is an offence under subsection (1)(f) consisting of contravening a requirement or prohibition imposed by a prohibition notice or an offence under subsection (1)(i), to imprisonment for a term not exceeding 2 years, or a fine, or both,
- (ii) if the offence is not one to which subparagraph (i) applies, to a fine.

(4) Where a person is convicted of an offence under subsection (1)(f) or (1)(n) then, if the contravention in respect of which he was convicted is continued after the conviction he shall, subject to section 29(3), be guilty of a further

offence and liable in respect thereof to a fine not exceeding level 3 on the Alderney uniform scale for each day on which the contravention is so continued.

**Offences due to fault of other person.**

26. Where the commission by any person of an offence under any of the relevant statutory provisions is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first-mentioned person.

**Offences by bodies corporate.**

27. (1) Where an offence under any of the relevant statutory provisions committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a 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.

(2) Where the affairs of body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

**Onus of proving limits of what is practicable etc.**

28. In any proceedings for an offence under any of the relevant statutory provisions consisting of a failure to comply with a duty or requirement to do something so far as is practicable or so far as is reasonably practicable, or to use the best practicable means to do something, it shall be for the accused to prove (as the case may be) that it was not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement, or that there was no better

practicable means than was in fact used to satisfy the duty or requirement.

**Power of Court to order cause of offence to be remedied.**

29. (1) Where a person is convicted of an offence under any of the relevant statutory provisions in respect of any matter which appear to the Court to be matters which it is in his power to remedy, the Court may, in addition to, or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying the said matters.

(2) The time fixed by an order under subsection (1) may be extended or further extended by order of the Court on an application made before the end of that time as originally fixed or as extended under this subsection, as the case may be.

(3) Where a person is ordered under subsection (1) to remedy any matters, that person shall not be liable under any of the relevant statutory provisions in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed under subsection (2).

PART V

MISCELLANEOUS AND GENERAL

**Appeals in connection with licensing provisions in the relevant statutory provisions.**

30. (1) A person aggrieved by a decision of the Committee under any of the relevant statutory provisions –

- (a) refusing to issue him a licence, to renew a licence held by him, or to transfer to him a licence held by another,
- (b) issuing him a licence on or subject to any term,

condition or restriction whereby he is aggrieved,

- (c) varying or refusing to vary any term, condition or restriction on or subject to which a licence is held by him, or
- (d) revoking a licence held by him,

may appeal therefrom to the Court on the grounds that the decision of the Committee is ultra vires or an unreasonable exercise of the Committee's powers.

(2) An appeal under this section shall be instituted by way of summons which shall set out the material facts on which the appellant relies and which shall be served on the Chairman of the Committee within a period of 28 days immediately following the date of the decision.

(3) On an appeal under this section the appellant shall have the burden of proof and the final right of reply.

(4) The decision of the Court in any proceedings brought under this section shall be final, subject to an appeal on a point of law to the Ordinary Division of the Royal Court of Guernsey.

**Service of notices.**

**31.** (1) Any notice required or authorised by any of the relevant statutory provisions to be served on, or given to, the Committee may be served or given by delivering it to or by leaving it at, or sending it by post to, the office of the Committee.

(2) Any such notice required or authorised to be served on, or given to any person may be served or given by delivering it to him, or by leaving it at

his proper address, or by sending it by post to him at that address.

- (3) Any such notice may –
  - (a) in the case of a body corporate, be served on or given to the secretary or clerk of that body,
  - (b) in the case of a partnership, be served on or given to a partner or a person having the control or management of the partnership business.

(4) For the purposes of this section and of section 11 of the Interpretation (Guernsey) Law, 1948<sup>c</sup>, in its application to this section, the proper address of any person on or to whom any such notice is to be served or given shall be his last known address, except that –

- (a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body,
- (b) in the case of a partnership or a person having the control or the management of the partnership business, it shall be the principal office of the partnership,

and for the purposes of this subsection the principal office of a company registered outside the Island or of a partnership carrying on business outside the Island shall be their principal office in the Island.

- (5) If the person to be served with or given any such notice has

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<sup>c</sup> Ordres en Conseil Vol. XIII, p. 355.

specified an address in the Island other than his proper address within the meaning of subsection (4), as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address shall also be treated for the purposes of this section and section 11 of the Interpretation (Guernsey) Law, 1948, as his proper address.

(6) Without prejudice to any other provision of this section, any such notice required or authorised to be served on, or given to, the owner or occupier of any premises (whether a body corporate or not) may be served or given by sending it by post to him at those premises, or by addressing it by name to the person on or to whom it is to be served or given, and delivering it to some responsible person who is or appears to be resident or employed in the premises.

(7) If the name or the address of any owner or occupier of premises on or to whom any such notice as aforesaid is to be served or given cannot after reasonable inquiry be ascertained, 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 premises (describing them) to which the notice relates, and by delivering it to some responsible person who is or appears to be resident or employed in 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.

(8) The preceding provisions of this section shall apply to the sending or giving of a document as they apply to the giving of a notice.

**Civil liability.**

**32.** (1) Breach of a duty imposed by any of the relevant statutory provisions shall, so far as it causes damage, be actionable except in so far as those provisions may otherwise provide.

(2) Any term of an agreement which purports to exclude or restrict

the operation of subsection (1), or any liability arising by virtue of that subsection, shall be void.

(3) In this section "**damage**" includes the death of, or injury to, any person (including any disease and any impairment of a person's physical or mental condition).

**Exclusion of application to domestic employment.**

33. Nothing in this Ordinance shall apply in relation to a person by reason only that he employs another, or is himself employed, as a domestic servant in a private household.

**Interpretation.**

34. (1) In this Ordinance, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

**"article for use at work"** means –

- (a) any plant designed for use or operation (whether exclusively or not) by persons at work, and
- (b) any article designed for use as a component in any such plant,

**"article of fairground equipment"** means any fairground equipment or any article designed for use as a component in any such equipment,

**"authorised analyst"** means a person for the time being authorised to act as an analyst for the purposes of this Ordinance by the Committee,

**"building regulations"** means regulations made under the Building (Alderney) Law, 1978<sup>d</sup>,

**"Chief Officer of Police"** means the Chief Officer of the salaried police force of the Island of Guernsey,

**"code of practice"**, without prejudice to section 13(8), includes a standard, a specification and any other documentary form of practical guidance,

**"Committee"** means the States of Alderney Policy and Finance Committee or such other committee as the States may by Ordinance appoint,

**"conditional sale agreement"** means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as the payment of instalments or otherwise as may be specified in the agreement are fulfilled,

**"contravention"** includes failure to comply, and **"contravene"** has a corresponding meaning,

**"credit-sale agreement"** means an agreement for the sale of goods, under which the purchase price or part of it is payable by instalments, but which is not a conditional sale agreement,

**"Court"** means the Court of Alderney,

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<sup>d</sup> Ordres en Conseil Vol. XXVI, p. 505; see Alderney Statutory Instrument No. 1 of 1978.

**"dangerous occurrence"** means an occurrence which arises out of or in connection with work and is of a class specified in –

- (a) Part I of Schedule 2,
- (b) Part II of Schedule 2 and takes place at a quarry,

**"domestic premises"** means premises occupied as a private dwelling (including any garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling) and **"non-domestic premises"** shall be construed accordingly,

**"enactment"** includes an order, regulations or other subordinate legislation made under an enactment,

**"factory"** has the same meaning as in the Safety of Employees (Miscellaneous Provisions) Ordinance, 1952<sup>e</sup>,

**"fairground equipment"** means any fairground ride, any similar plant which is designed to be in motion for entertainment purposes with members of the public on or inside it or any plant which is designed to be used by members of the public for entertainment purposes either as a slide or for bouncing upon, and in this definition the reference to plant which is designed to be in motion with members of the public on or inside it includes a reference to swings, dodgems and other plant which is designed to be in motion wholly or partly under the control of, or to be put in motion by, a member of the public,

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<sup>e</sup> An Ordinance of the States of Guernsey: Recueil d'Ordonnances Tome X, p. 194.

**"growing property"** has the same meaning as in the Safety of Employees (Growing Properties) Ordinance, 1954<sup>f</sup>,

**"hire-purchase agreement"** means an agreement other than a conditional sale agreement, under which –

- (a) goods are bailed or hired in return for periodical payments by the person to whom they are bailed or hired, and
- (b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs –
  - (i) the exercise of an option to purchase by that person,
  - (ii) the doing of any other specified act by any party to the agreement,
  - (iii) the happening of any other event,

and **"hire-purchase"** shall be construed accordingly,

**"improvement notice"** means a notice under section 18,

**"inspector"** means an inspector appointed under section 15,

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<sup>f</sup> An Ordinance of the States of Guernsey: Recueil d'Ordonnances Tome XI, p. 55.

**"ionising radiations"** has the same meaning as in the Safety of Employees (Ionising Radiations) (Guernsey) Ordinance, 1967<sup>g</sup>,

**"Island"** means the Island of Alderney and includes the islets and rocks thereof,

**"Law"** means the Health and Safety at Work (Alderney) Law, 1997<sup>h</sup>,

**"micro-organism"** includes any microscopic biological entity which is capable of replication,

**"officer of police"** means a member of the salaried police force of the Island of Guernsey, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a member of the Alderney Special Constabulary established pursuant to section 46A of the Government of Alderney Law, 1987<sup>i</sup>,

**"offshore installation"** means any installation which is intended for underwater exploitation of mineral resources or exploration with a view to such exploitation,

**"operator"** means in relation to a vehicle to which paragraph 13 or 14 of Schedule 2, Part I applies –

- (a) a person who holds an operator's licence for the use of

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<sup>g</sup> Recueil d'Ordonnances Tome XV, p. 90.

<sup>h</sup> Order in Council No. XXXI of 1997.

<sup>i</sup> Ordres en Conseil Vol. XXX, p. 37; No. XI of 1988; No. VI of 1989; No. XI of 1993; No. IX of 1995; and No I of 2000.

that vehicle for the carriage of goods on a road, or

- (b) where no such licence is required, the owner or keeper of the vehicle,

**"personal injury"** includes any disease and any impairment of a person's physical or mental condition,

**"plant"** includes any machinery, equipment, appliance, playground equipment and swimming pool,

**"premises"** includes any place and, in particular, includes –

- (a) any vehicle, vessel, aircraft or hovercraft,
- (b) any installation on land (including the foreshore and other land intermittently covered by water), any offshore installation, and any other installation (whether floating, or resting on the sea-bed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof), and
- (c) any tent or movable structure,

**"prescribed"** means prescribed by the Committee by regulations,

**"prohibition notice"** means a notice under section 19,

**"quarry"** has the same meaning as in the Quarries (Safety)

Ordinance, 1954<sup>j</sup>,

**"relevant statutory provisions"** means –

- (a) the provisions of any Ordinance made under the Law, including this Ordinance, and
- (b) the provisions of the Law entitled "Loi relative aux Explosifs" registered on the 2<sup>nd</sup> December, 1905<sup>k</sup>,

**"responsible person"** means –

- (a) in the case of –
  - (i) a quarry, the owner of that quarry,
  - (ii) a pipeline as defined in paragraph 12(2) of Schedule 2, the owner of that pipeline,
  - (iii) a vehicle to which paragraph 13 or 14 of Schedule 2, Part I applies, the operator of the vehicle,
- (b) where paragraph (a) does not apply, in the case of any event (other than a dangerous occurrence) reportable under section 9(1), (3) or (4), or any case of disease reportable under section 9(5), involving –

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<sup>j</sup> An Ordinance of the States of Guernsey: Recueil d'Ordonnances Tome XI, p.

3.

<sup>k</sup> Ordres en Conseil Vol. IV, p. 57.

- (i) an employee at work (including any person who is to be treated as an employee by virtue of any relevant statutory provision), his employer,
  - (ii) a person (excluding one who is to be treated as an employee by virtue of any relevant statutory provision) undergoing training for employment, the person whose undertaking makes the immediate provision of that training,
- (c) in any other case, the person for the time being having control of the premises in connection with the carrying on by him of any trade, business or other undertaking (whether for profit or not) at which, or in connection with the work at which, the accident or dangerous occurrence reportable under section 9(1), (3) or (4), or case of disease reportable under section 9(5), happened,

**"substance"** means any natural or artificial substance, (including micro-organisms) whether in solid or liquid form or any combination of the two forms, or in the form of a gas or vapour,

**"substance for use at work"** means any substance intended for use (whether exclusively or not) by persons at work,

**"supply"**, where the reference is to supplying articles or substances, means supplying them by way of sale, lease, hire or hire-purchase, whether as principal or agent for another,

**"training"** includes work experience received as part of a training

programme; it does not include training on a course at a university, polytechnic, college, school or similar educational or technical institute where that body is the immediate provider of the training; but it does include training at a skill centre, training centre or other training establishment,

**"work"** means work as an employee, as a self-employed person or as a person undergoing training for employment.

(2) The functions conferred on the Committee by or under this Ordinance may be exercised or discharged by the Chairman of the Committee and one other member thereof or by any two members of the Committee if authorised in that behalf by the Committee (the whole without prejudice to the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>l</sup>).

(3) Except where the context otherwise requires, any reference in this Ordinance to any other enactment shall be construed as including a reference to that enactment as amended, replaced, extended or applied by or under any other enactment, including this Ordinance.

(4) The Interpretation (Guernsey) Law, 1948<sup>m</sup> shall apply to the interpretation of this Ordinance.

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#### NOTES

*In accordance with the provisions of the Police Force (Bailiwick of Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.*

*The Building (Alderney) Law, 1978 has since been repealed by the Building*

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<sup>l</sup> Order in Council No. XXI of 1991.

<sup>m</sup> Ordres en Conseil Vol. XIII, p. 355.

*and Development Control (Alderney) Law, 2002, section 77(1), Schedule, paragraph 2, with effect from 1st August, 2003, subject to the savings in section 77(2) of the 2002 Law.*

*The Government of Alderney Law, 1987 has since been repealed by the Government of Alderney Law, 2004, section 63(1), Schedule 3, with effect from 1st May, 2005, subject to the savings and transitional provisions in section 63(2) and section 64 of the 2004 Law.*

*The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.*

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**Power to make regulations.**

35. (1) The Committee may, from time to time, make regulations prescribing –

- (a) the preparation and revision of general policy statements with respect to health and safety at work,
- (b) the giving of such information about such aspects of the way in which an undertaking is conducted as might affect the health or safety of person affected by the conduct of the undertaking, pursuant to section 2(3),
- (c) diseases required to be notified to the Committee pursuant to section 9(5),
- (d) the manner of testing required under paragraph 6(2) of Schedule 2, and
- (e) the substances deemed to be "**dangerous substances**" for the purposes of –
  - (i) paragraph 13(2) of Schedule 2, or

(ii) paragraph 14(2) of Schedule 2.

(2) The power to make regulations under subsection (1) shall include power to vary or revoke any regulations so made.

**Extent.**

**36.** This Ordinance shall have effect in the Island.

**Citation and commencement.**

**37.** (1) This Ordinance may be cited as the Health and Safety at Work (Alderney) Ordinance, 2003.

(2) This Ordinance shall come into force on the 1<sup>st</sup> day of January, 2004.

SCHEDULE 1  
RECORDS

Section 10

PART I

PARTICULARS TO BE KEPT IN RECORDS OF ANY EVENT  
REPORTABLE UNDER SECTION 9(1), (2) and (3)

1. Date and time of accident or dangerous occurrence.
2. The following particulars of the person affected –
  - (a) full name,
  - (b) occupation,
  - (c) nature of injury or condition.
3. Place where the accident or dangerous occurrence happened.
4. A brief description of the circumstances.

PART II

PARTICULARS TO BE KEPT IN RECORDS OF INSTANCES OF  
DISEASES REPORTABLE UNDER SECTION 9(5)

1. Date of diagnosis of the disease.
2. Full name and occupation of the person affected.
3. Name or nature of the disease.

PART III

ADDITIONAL PROVISIONS RELATING TO QUARRIES

1. In this part of this Schedule, unless the context otherwise requires, "**nominated person**" means the person who is for the time being nominated –

- (a) in a case where there is an association or body representative of a majority of the total number of persons employed at a quarry, by that association or body,
- (b) in any other case, jointly by associations or bodies which are together representative of such a majority,

to receive on behalf of the persons so employed notices under this part of this Schedule.

2. Where at a quarry any person, as a result of an accident arising out of or in connection with work, dies or suffers any of the injuries or conditions specified by section 9(2), or where there is a dangerous occurrence, the responsible person shall –

- (a) forthwith notify the nominated person thereof by the quickest practicable means, and
- (b) within 7 days send a report thereof to the nominated person on a form approved for the purposes of section 9.

3. Where there is a non-fatal injury to any person at a quarry which is reported in accordance with paragraph 2, after which that person dies and his death is

as a result of the accident, then as soon as it comes to his knowledge the responsible person shall give notice of the death to the nominated person.

4. Where there is an accident or dangerous occurrence in relation to which paragraph 2 applies no person shall disturb the place where it happened or tamper with anything at that place before –

- (a) the expiration of 3 clear days after the matter to which paragraph 2 applies has been notified in accordance with this Ordinance, or
- (b) the place has been visited by an inspector exercising the powers conferred on him by this Ordinance,

whichever is the sooner.

#### PART IV

#### MATTERS WHICH COMMITTEE MAY REQUIRE TO BE NOTIFIED

1. Further details of the circumstances leading up to the reported incident.

2. Further details about the nature or design or both of any plant involved in the reported incident.

3. Safety systems and procedures for the control of the plant or substance involved in the reported incident.

4. Qualifications, experience and training of staff having use or control of any plant or substance or concerned with safety systems or procedures.

5. Design and operation documentation.
6. Arrangements for the protection of personnel from any plant or substance connected with the reported incident.
7. Details of any examination of, or tests carried out on, any plant or installation involved in the reported incident.
8. Any available information about levels of exposure of persons at the work place to airborne substances.

SCHEDULE 2

Section 34(1)

DANGEROUS OCCURRENCES

PART I

GENERAL

**Lifting machinery, etc.**

1. The collapse of, the overturning of, or the failure of any load bearing part of –

- (a) any lift, hoist, crane, derrick or mobile powered access platform, but not any winch, teagle, pulley block, gin wheel, transporter or runway,
- (b) any excavator, or
- (c) any pile driving frame or rig having an overall height, when operating, of more than 7 metres.

**Passenger carrying amusement device.**

2. The following incidents at a fun fair (whether or not a travelling fun fair) while the relevant device is in use or under test –

- (a) the collapse of, or the failure of any load bearing part of, any amusement device provided as part of the fun fair which is designed to allow passengers to move or ride on it or inside it, or
- (b) the failure of any safety arrangement connected with such device, which is designed to restrain or support passengers.

**Pressure vessels.**

3. Explosion, collapse or bursting of any closed vessel, including a boiler or boiler tube, in which the internal pressure was above or below atmospheric pressure, which might have been liable to cause the death of, or any of the injuries or conditions covered by section 9(2) to, any person, or which resulted in the stoppage of the plant involved.

**Electrical short circuit.**

4. Electrical short circuit or overload attended by fire or explosion which resulted in the stoppage of the plant involved and which, taking into account the circumstances of the occurrence, might have been liable to cause the death of, or any of the injuries or conditions covered by section 9(2) to, any person.

**Explosion or fire.**

5. An explosion or fire occurring in any plant or place which resulted in the stoppage of that plant or suspension of normal work in that place where such explosion or fire was due to the ignition of process materials, their by-products (including waste) or finished products.

**Escape of flammable substances.**

6. (1) The sudden, uncontrolled release of liquefied petroleum gas or any other highly flammable liquid defined in subparagraph (2), flammable gas or flammable liquid above its boiling point from any system or plant or pipeline.

(2) In this Schedule –

**"aqueous ammonia"** means ammonia gas dissolved in water,

**"highly flammable liquid"** means any of the following, other than aqueous ammonia, liquefied flammable gas and liquefied petroleum gas, that

is to say, any liquid, liquid solution, emulsion or suspension which, when tested in the prescribed manner gives off a flammable vapour at a temperature of less than 32 degrees Celsius and, when tested by any further prescribed manner supports combustion,

**"liquefied flammable gas"** means any substance which at a temperature of 20 degrees Celsius and a pressure of 760 millimetres of mercury would be a flammable gas, but which is in liquid form as a result of the application of pressure or refrigeration or both,

**"liquefied petroleum gas"** means commercial butane (that is, a hydrocarbon mixture consisting predominantly of butane, butylene or any mixture thereof) or commercial propane (that is, a hydrocarbon mixture consisting predominantly of propane, propylene or any mixture thereof) or any mixture of commercial butane and commercial propane.

**Collapse of scaffolding.**

7. A collapse or partial collapse of any scaffold which results in a substantial part of the scaffold falling or overturning; and where the scaffold is slung or suspended, a collapse or partial collapse of the suspension arrangements (including any outrigger) which causes a working platform or cradle to fall.

**Collapse of building or structure.**

8. Any unintended collapse or partial collapse of –
- (a) any building or structure under construction, reconstruction, alteration or demolition, or of any false work, involving a fall of material, or
  - (b) any floor or wall of any building being used as a place of work, not being a building under construction,

reconstruction, alteration or demolition.

**Escape of a substance or pathogen.**

9. The uncontrolled or accidental release or the escape of any substance or pathogen from any apparatus, equipment, pipework, pipeline, process plant, storage vessel, tank, in-works conveyance tanker, land-fill site, or exploratory land drilling site, which having regard to the nature of the substance or pathogen and the extent and location of the release or escape, might have been liable to cause the death of, any of the injuries or conditions covered by section 9(2) to, or other damage to the health of, any person.

**Explosives.**

10. Any ignition or explosion of explosives, where the ignition or explosion was not intentional.

**Freight containers.**

11. Failure of any freight container or failure of any load bearing part thereof while it is being raised, lowered or suspended and in this paragraph "**freight container**" means an article of transport equipment which is –

- (a) of a permanent character and accordingly strong enough for repeated use, and
- (b) designed to facilitate the transport of goods by one or more modes of transport without intermediate reloading, and
- (c) designed to be secured or readily handled or both, and

includes a container when carried on a chassis but does not include a vehicle or packaging.

**Pipelines.**

12. (1) Either of the following incidents in relation to a pipeline –
- (a) the bursting, explosion or collapse of a pipeline or any part thereof, or
  - (b) the unintentional ignition of anything in a pipeline, or of anything which immediately before it was ignited was in a pipeline.
- (2) In this paragraph "**pipeline**" means a pipe or system of pipes for the conveyance of anything, together with –
- (a) any apparatus for inducing or facilitating the flow of anything through, or through a part of, the pipe or system,
  - (b) valves, valve chambers and similar works which are annexed to, or incorporated in the course of the pipe system,
  - (c) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in paragraph 11,
  - (d) apparatus for the transmission of information for the operation of the pipe or system,
  - (e) apparatus for the cathodic protection of the pipe or system, and

- (f) a structure used or to be used solely for the support of a part of the pipe or system.

**Conveyance of dangerous substances by road.**

13. (1) Any incident –

- (a) in which a road tanker or tank container used for conveying a dangerous substance by road –

- (i) overturns, or

- (ii) suffers serious damage to the tank in which the dangerous substance is being conveyed, or

- (b) in which there is, in relation to such a road tanker or tank container –

- (i) an uncontrolled release or escape of the dangerous substance being conveyed, or

- (ii) a fire which involves the dangerous substance being conveyed.

(2) In this paragraph –

**"dangerous substance"** means any substance (including any preparation) which is either –

- (a) specified by the Committee by regulations under section 35(1)(e)(i), unless it is conveyed by road at such

a dilution that a risk to the health and safety of any person is not created by that conveyance, or

- (b) any other substance which by reason of its characteristic properties creates a risk to the health and safety of any person in the course of conveyance by road which is comparable with the risk created by substances which are specified in item (a),

**"goods vehicle"** means a motor vehicle constructed or adapted for use for the carriage of goods, or a trailer so constructed or adapted,

**"road tanker"** means a goods vehicle which has a tank which is structurally attached to, or is an integral part of, the frame of the vehicle,

**"tank"** means a tank which is –

- (a) used for the conveyance by road of a liquid, gaseous, powdery or granular material or a sludge, in bulk, and
- (b) so constructed that it can be securely closed (except for the purpose of relieving excessive pressure) during the course of conveyance by road,

**"tank container"** means a tank (whether or not divided into separate compartments) having a total capacity of more than 3 cubic metres other than the tank of a road tanker.

- (3) A vehicle shall be deemed for the purposes of this paragraph to be used for the conveyance by road of a dangerous substance throughout the period –

*Consolidated text*

- (a) in the case of a road tanker, from the commencement of loading for the purpose of conveying the substance on a road until the tank or compartment of the tank has been cleaned or purged so that any of the substance or its vapour which remains in it is not sufficient to create a risk to the health or safety of any person, or
- (b) in the case of a vehicle carrying a tank container from either –
  - (i) the time at which the tank container containing the dangerous substance is placed on the vehicle, or
  - (ii) if the container was placed on the vehicle before loading was commenced, from the commencement of loading,

for the purpose of conveying the substance on a road until either –

- (iii) the tank container is removed from the vehicle, or
- (iv) the tank container or compartment of the tank container has been cleaned or purged so that any of the substance or its vapour which remains in it is not sufficient to create a risk to the health or safety of any person,

and in either case, whether or not the vehicle is on a road at the material time.

**14.** (1) Any incident involving a vehicle conveying a dangerous substance by road, other than a vehicle to which paragraph 13 applies, where there is

—

(a) an uncontrolled release or escape from any package or container of the dangerous substance being conveyed, or

(b) a fire which involves the dangerous substance being conveyed.

(2) In this paragraph "**dangerous substance**" means a substance which is dangerous for conveyance as prescribed by regulations under section 35(1)(e)(ii).

**Breathing apparatus.**

**15.** Any incident where breathing apparatus, while being used to enable the wearer to breathe independently of the surrounding environment, malfunctions in such a way as to be likely either to deprive the wearer of oxygen or, in the case of use in a contaminated atmosphere, to expose the wearer to the contaminant, to the extent in either case of posing a danger to his health, except that this paragraph shall not apply to such apparatus while it is being maintained or tested.

**Overhead electric lines.**

**16.** Any incident in which plant or equipment either comes into contact with an uninsulated overhead electric line in which the voltage exceeds 200 volts, or causes an electric discharge from such an electric line by coming into close proximity to it, unless in either case the incident was intentional.

PART II

DANGEROUS OCCURRENCES REPORTABLE  
IN RELATION TO QUARRIES

1. The collapse of any storage bunker.

2. (1) An incident in which any person suffers an injury, not being an injury covered by section 9(2) or one reportable under section 9(3), resulting from an explosion or discharge of any explosive article or substance for which he receives first-aid or medical treatment at the quarry.

(2) In this paragraph –

**"explosive article"** means an article containing one or more explosive substances,

**"explosive substance"** means –

(a) a solid or liquid substance, or

(b) a mixture of solid or liquid substances or both, which is capable by chemical reaction in itself of producing gas at such a temperature and pressure and at such a speed as could cause damage to surroundings or which is designed to produce an effect by heat, light, sound, gas or smoke or a combination of these as a result of non-detonative self-sustaining exothermic chemical reactions.

3. An occurrence in which any substance is ascertained to have been projected beyond a quarry boundary as a result of blasting operations in circumstances in which any person was, or might have been, endangered.

**4.** An incident in which any person suffers electric shock or burns requiring first-aid or medical treatment at a quarry from any electrical circuit (whether or not due to direct contact) in which the voltage for the time being exceeds 25 volts.