



Health and Safety at Work etc. Act 1974

1974 CHAPTER 37

PART I

HEALTH, SAFETY AND WELFARE IN CONNECTION WITH WORK, AND CONTROL OF DANGEROUS SUBSTANCES AND CERTAIN EMISSIONS INTO THE ATMOSPHERE

Enforcement

18 Authorities responsible for enforcement of the relevant statutory provisions

- (1) It shall be the duty of the Executive to make adequate arrangements for the enforcement of the relevant statutory provisions except to the extent that some other authority or class of authorities is by any of those provisions or by regulations under subsection (2) below made responsible for their enforcement.
- (2) The Secretary of State may by regulations—
 - (a) make local authorities responsible for the enforcement of the relevant statutory provisions to such extent as may be prescribed;
 - (b) make provision for enabling responsibility for enforcing any of the relevant statutory provisions to be, to such extent as may be determined under the regulations—
 - (i) transferred from the Executive to local authorities or from local authorities to the Executive; or
 - (ii) assigned to the Executive or to local authorities for the purpose of removing any uncertainty as to what are by virtue of this subsection their respective responsibilities for the enforcement of those provisions:

and any regulations made in pursuance of paragraph (b) above shall include provision for securing that any transfer or assignment effected under the regulations is brought to the notice of persons affected by it.

- (3) Any provision made by regulations under the preceding subsection shall have effect subject to any provision made by health and safety regulations or agricultural health and safety regulations in pursuance of section 15(3)(c).
- (4) It shall be the duty of every local authority—
- (a) to make adequate arrangements for the enforcement within their area of the relevant statutory provisions to the extent that they are by any of those provisions or by regulations under subsection (2) above made responsible for their enforcement; and
 - (b) to perform the duty imposed on them by the preceding paragraph and any other functions conferred on them by any of the relevant statutory provisions in accordance with such guidance as the Commission may give them.
- (5) Where any authority other than the appropriate Agriculture Minister, the Executive or a local authority is by any of the relevant statutory provisions or by regulations under subsection (2) above made responsible for the enforcement of any of those provisions to any extent, it shall be the duty of that authority—
- (a) to make adequate arrangements for the enforcement of those provisions to that extent; and
 - (b) to perform the duty imposed on the authority by the preceding paragraph and any other functions conferred on the authority by any of the relevant statutory provisions in accordance with such guidance as the Commission may give to the authority.
- (6) Nothing in the provisions of this Act or of any regulations made thereunder charging any person in Scotland with the enforcement of any of the relevant statutory provisions shall be construed as authorising that person to institute proceedings for any offence.
- (7) In this Part—
- (a) "enforcing authority" means the Executive or any other authority which is by any of the relevant statutory provisions or by regulations under subsection (2) above made responsible for the enforcement of any of those provisions to any extent; and
 - (b) any reference to an enforcing authority's field of responsibility is a reference to the field over which that authority's responsibility for the enforcement of those provisions extends for the time being ;

but where by virtue of paragraph (a) of section 13(1) the performance of any function of the Commission or the Executive is delegated to a government department or person, references to the Commission or the Executive (or to an enforcing authority where that authority is the Executive) in any provision of this Part which relates to that function shall, so far as may be necessary to give effect to any agreement under that paragraph, be construed as references to that department or person; and accordingly any reference to the field of responsibility of an enforcing authority shall be construed as a reference to the field over which that department or person for the time being performs such a function.

19 Appointment of inspectors

- (1) Every enforcing authority 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 within its field of responsibility, 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 specifying which of the powers conferred on inspectors by the relevant statutory provisions are to be exercisable by the person appointed; and an inspector shall in right of his appointment under this section—
 - (a) be entitled to exercise only such of those powers as are so specified ; and
 - (b) be entitled to exercise the powers so specified only within the field of responsibility of the authority which appointed him.
- (3) So much of an inspector's instrument of appointment as specifies the powers which he is entitled to exercise may be varied by the enforcing authority which appointed him.
- (4) An 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.

20 Powers of inspectors

- (1) Subject to the provisions of section 19 and this section, an inspector may, for the purpose of carrying into effect any of the relevant statutory provisions within the field of responsibility of the enforcing authority which appointed him, exercise the powers set out in subsection (2) below.
- (2) The powers of an inspector referred to in the preceding subsection 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 mentioned in subsection (1) above ;
 - (b) to take with him a constable if he has reasonable cause to apprehend any serious obstruction in the execution of his duty;
 - (c) without prejudice to the preceding paragraph, on entering any premises by virtue of paragraph (a) above to take with him—
 - (i) any other person duly authorised by his (the inspector's) enforcing authority ; 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 mentioned in subsection (1) above ;
 - (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) above;
 - (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) above;
 - (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

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- 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 mentioned in subsection (1) above);
- (i) in the case of any such article or substance as is mentioned in the preceding paragraph, 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 that paragraph ;
 - (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 21 or 22;
- (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) above 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) above;
- (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 mentioned in subsection (1) above.
- (3) The Secretary of State may by regulations make provision as to the procedure to be followed in connection with the taking of samples under subsection (2)(g) above (including provision as to the way in which samples that have been so taken are to be dealt with).
- (4) Where an inspector proposes to exercise the power conferred by subsection (2)(h) above 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 the safety of the State.
- (5) Before exercising the power conferred by subsection (2)(h) above 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.
- (6) Where under the power conferred by subsection (2)(i) above 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.

- (7) No answer given by a person in pursuance of a requirement imposed under subsection (2)(j) above shall be admissible in evidence against that person or the husband or wife of that person in any proceedings.
- (8) 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 on an order for discovery in an action in the High Court or, as the case may be, on an order for the production of documents in an action in the Court of Session.

21 Improvement notices

If an 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,

he may serve on him a notice (in this Part referred to as " an improvement notice ") stating that he is of that opinion, specifying the provision or provisions as to which he is of that opinion, giving particulars of the reasons why he is of that opinion, and requiring that person to remedy the contravention or, as the case may be, the matters occasioning it within such period (ending not earlier than the period within which an appeal against the notice can be brought under section 24) as may be specified in the notice.

22 Prohibition notices

- (1) This section applies to any activities which are being or are about 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 about 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 Part 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, state that he is of that opinion, specify the provision or provisions as to which he is of that opinion, and 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) above and any associated contraventions of provisions so specified in pursuance of paragraph (c) above have been remedied.

- (4) A direction given in pursuance of subsection (3)(d) above shall take immediate effect if the inspector is of the opinion, and states it, that the risk of serious personal injury is or, as the case may be, will be imminent, and shall have effect at the end of a period specified in the notice in any other case.

23 Provisions supplementary to ss. 21 and 22

- (1) In this section " a notice " means an improvement notice or a prohibition notice.
- (2) A notice may (but need not) 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.
- (3) Where any of the relevant statutory provisions applies to a building or any matter connected with a building and an 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.

In this subsection " 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 an inspector serves in connection with any premises used or about to be used as a place of work a notice 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, he shall consult the fire authority.

In this subsection " fire authority " has the meaning assigned by section 43(1) of the Fire Precautions Act 1971.

- (5) Where an improvement notice or a prohibition notice which is not to take immediate effect has been served—
- (a) the notice may be withdrawn by an inspector at any time before the end of the period specified therein in pursuance of section 21 or section 22(4) as the case may be; and
 - (b) the period so specified may be extended or further extended by an inspector at any time when an appeal against the notice is not pending.
- (6) In the application of this section to Scotland—
- (a) in subsection (3) for the words from " with the requirements " to " aforesaid " there shall be substituted the words—

- “(a) to any provisions of the building standards regulations to which that building or matter would be required to conform if the relevant building were being newly erected ; or
- (b) where the sheriff, on an appeal to him under section 16 of the Building (Scotland) Act 1959—
 - (i) against an order under section 10 of that Act requiring the execution of operations necessary to make the building or matter conform to the building standards regulations, or
 - (ii) against an order under section 11 of that Act requiring the building or matter to conform to a provision of such regulations, has varied the order, to any provisions of the building standards regulations referred to in paragraph (a) above as affected by the order as so varied, unless the relevant statutory provision imposes specific requirements more onerous than the requirements of any provisions of building standards regulations as aforesaid or, as the case may be, than the requirements of the order as varied by the sheriff.”;

(b) after subsection (5) there shall be inserted the following subsection—

“(5A) In subsection (3) above ' building standards regulations' has the same meaning as in section 3 of the Building (Scotland) Act 1959.”.

24 Appeal against improvement or prohibition notice

- (1) In this section " a notice " means an improvement notice or a prohibition notice.
- (2) A person on whom a notice is served may within such period from the date of its service as may be prescribed appeal to an industrial tribunal; and on such an appeal the tribunal may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the tribunal may in the circumstances think fit,
- (3) Where an appeal under this section is brought against a notice within the period allowed under the preceding subsection, 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 tribunal so directs (and then only from the giving of the direction).
- (4) One or more assessors may be appointed for the purposes of any proceedings brought before an industrial tribunal under this section.

25 Power to deal with cause of imminent danger

- (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 of 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) above 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 the preceding paragraph.

26 Power of enforcing authorities to indemnify their inspectors

Where an action has been brought against an inspector in respect of an act done in the execution or purported execution of any of the relevant statutory provisions and the circumstances are such that he is not legally entitled to require the enforcing authority which appointed him to indemnify him, that authority may, nevertheless, indemnify him against the whole or part of any damages and costs or expenses which he may have been ordered to pay or may have incurred, if the authority is satisfied that he honestly believed that the act complained of was within his powers and that his duty as an inspector required or entitled him to do it.