



# Clean Air Act 1993

## 1993 CHAPTER 11

### PART II **E+W+S**

#### SMOKE, GRIT, DUST AND FUMES

PROSPECTIVE

#### *Installation of furnaces*

- 4** **Requirement that new furnaces shall be so far as practicable smokeless.** **E+W+S**
- (1) No furnace shall be installed in a building or in any fixed boiler or industrial plant unless notice of the proposal to install it has been given to the local authority.
  - (2) No furnace shall be installed in a building or in any fixed boiler or industrial plant unless the furnace is so far as practicable capable of being operated continuously without emitting smoke when burning fuel of a type for which the furnace was designed.
  - (3) Any furnace installed in accordance with plans and specifications submitted to, and approved for the purposes of this section by, the local authority shall be treated as complying with the provisions of subsection (2).
  - (4) Any person who installs a furnace in contravention of subsection (1) or (2) or on whose instructions a furnace is so installed shall be guilty of an offence and liable on summary conviction—
    - (a) in the case of a contravention of subsection (1), to a fine not exceeding level 3 on the standard scale; and
    - (b) in the case of a contravention of subsection (2), to a fine not exceeding level 5 on that scale.
  - (5) This section does not apply to the installation of domestic furnaces.

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- (6) This section applies in relation to—
- (a) the attachment to a building of a boiler or industrial plant which already contains a furnace; or
  - (b) the fixing to or installation on any land of any such boiler or plant, as it applies in relation to the installation of a furnace in any fixed boiler or industrial plant.

*Limits on rate of emission of grit and dust*

**5 Emission of grit and dust from furnaces. E+W+S**

- (1) This section applies to any furnace other than a domestic furnace.
- (2) The Secretary of State may by regulations prescribe limits on the rates of emission of grit and dust from the chimneys of furnaces to which this section applies.
- (3) If on any day grit or dust is emitted from a chimney serving a furnace to which this section applies at a rate exceeding the relevant limit prescribed under subsection (2), the occupier of any building in which the furnace is situated shall be guilty of an offence.
- (4) In proceedings for an offence under subsection (3) it shall be a defence to prove that the best practicable means had been used for minimising the alleged emission.
- (5) If, in the case of a building containing a furnace to which this section applies and which is served by a chimney to which there is no limit applicable under subsection (2), the occupier fails to use any practicable means there may be for minimising the emission of grit or dust from the chimney, he shall be guilty of an offence.
- (6) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Modifications etc. (not altering text)**

**C1** S. 5 power to exclude conferred (27.8.1993) by 1993 c. 11, s. 45(1)(a)

*Arrestment plant for furnaces*

**6 Arrestment plant for new non-domestic furnaces. E+W+S**

- (1) A furnace other than a domestic furnace shall not be used in a building—
  - (a) to burn pulverised fuel; or
  - (b) to burn, at a rate of 45.4 kilograms or more an hour, any other solid matter; or
  - (c) to burn, at a rate equivalent to 366.4 kilowatts or more, any liquid or gaseous matter,
 unless the furnace is provided with plant for arresting grit and dust which has been approved by the local authority or which has been installed in accordance with plans and specifications submitted to and approved by the local authority, and that plant is properly maintained and used.

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- (2) Subsection (1) has effect subject to any exemptions prescribed or granted under section 7.
- (3) The Secretary of State may by regulations substitute for any rate mentioned in subsection (1)(b) or (c) such other rate as he thinks fit: but no regulations shall be made so as to reduce any rate unless a draft of the regulations has been laid before and approved by each House of Parliament.
- (4) Regulations under subsection (3) reducing any rate shall not apply to a furnace which has been installed, the installation of which has been begun, or an agreement for the purchase or installation of which has been entered into, before the date on which the regulations come into force.
- (5) If on any day a furnace is used in contravention of subsection (1), the occupier of the building shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## 7 Exemptions from section 6. **E+W+S**

- (1) The Secretary of State may by regulations provide that furnaces of any class prescribed in the regulations shall, while used for a purpose so prescribed, be exempted from the operation of section 6(1).
- (2) If on the application of the occupier of a building a local authority are satisfied that the emission of grit and dust from any chimney serving a furnace in the building will not be prejudicial to health or a nuisance if the furnace is used for a particular purpose without compliance with section 6(1), they may exempt the furnace from the operation of that subsection while used for that purpose.
- (3) If a local authority to whom an application is duly made for an exemption under subsection (2) fail to determine the application and to give a written notice of their decision to the applicant within—
  - (a) eight weeks of receiving the application; or
  - (b) such longer period as may be agreed in writing between the applicant and the authority,the furnace shall be treated as having been granted an exemption from the operation of section 6(1) while used for the purpose specified in the application.
- (4) If a local authority decide not to grant an exemption under subsection (2), they shall give the applicant a written notification of their decision stating their reasons, and the applicant may within twenty-eight days of receiving the notification appeal against the decision to the Secretary of State.
- (5) On an appeal under this section the Secretary of State—
  - (a) may confirm the decision appealed against; or
  - (b) may grant the exemption applied for or vary the purpose for which the furnace to which the application relates may be used without compliance with section 6(1);and shall give the appellant a written notification of his decision, stating his reasons for it.
- (6) If on any day a furnace which is exempt from the operation of section 6(1) is used for a purpose other than a prescribed purpose or, as the case may be, a purpose for

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which the furnace may be used by virtue of subsection (2), (3) or (5), the occupier of the building shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**8 Requirement to fit arrestment plant for burning solid fuel in other cases. E+W+S**

- (1) A domestic furnace shall not be used in a building—
- (a) to burn pulverised fuel; or
  - (b) to burn, at a rate of 1.02 tonnes an hour or more, solid fuel in any other form or solid waste,
- unless the furnace is provided with plant for arresting grit and dust which has been approved by the local authority or which has been installed in accordance with plans and specifications submitted to and approved by the local authority, and that plant is properly maintained and used.
- (2) If a furnace is used in a building in contravention of subsection (1), the occupier of the building shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**9 Appeal to Secretary of State against refusal of approval. E+W+S**

- (1) Where a local authority determine an application for approval under section 6 or 8, they shall give the applicant a written notification of their decision and, in the case of a decision not to grant approval, shall state their reasons for not doing so.
- (2) A person who—
- (a) has made such an application to a local authority; or
  - (b) is interested in a building with respect to which such an application has been made,
- may, if he is dissatisfied with the decision of the authority on the application, appeal within twenty-eight days after he is notified of the decision to the Secretary of State; and the Secretary of State may give any approval which the local authority might have given.
- (3) An approval given by the Secretary of State under this section shall have the like effect as an approval of the local authority.

*Measurement of grit, dust and fumes*

**10 Measurement of grit, dust and fumes by occupiers. E+W+S**

- (1) If a furnace in a building is used—
- (a) to burn pulverised fuel;
  - (b) to burn, at a rate of 45.4 kilograms or more an hour, any other solid matter; or
  - (c) to burn, at a rate equivalent to 366.4 kilowatts or more, any liquid or gaseous matter,
- the local authority may, by notice in writing served on the occupier of the building, direct that the provisions of subsection (2) below shall apply to the furnace, and those provisions shall apply accordingly.

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- (2) In the case of a furnace to which this subsection for the time being applies, the occupier of the building shall comply with such requirements as may be prescribed as to—
  - (a) making and recording measurements from time to time of the grit, dust and fumes emitted from the furnace;
  - (b) making adaptations for that purpose to the chimney serving the furnace;
  - (c) providing and maintaining apparatus for making and recording the measurements; and
  - (d) informing the local authority of the results obtained from the measurements or otherwise making those results available to them;and in this subsection “prescribed” means prescribed (whether generally or for any class of furnace) by regulations made by the Secretary of State.
- (3) If the occupier of the building fails to comply with those requirements, he shall be guilty of an offence and liable on summary conviction—
  - (a) to a fine not exceeding level 5 on the standard scale; or
  - (b) to cumulative penalties on continuance in accordance with section 50.
- (4) The occupier of a building who by virtue of subsection (2) is under a duty to make and record measurements of grit, dust and fumes emitted from a furnace in the building shall permit the local authority to be represented during the making and recording of those measurements.
- (5) The Secretary of State may by regulations substitute for any rate mentioned in subsection (1)(b) or (c) such other rate as he thinks fit; but regulations shall not be made under this subsection so as to reduce any rate unless a draft of the regulations has been laid before and approved by each House of Parliament.
- (6) Any direction given by a local authority under subsection (1) with respect to a furnace in a building may be revoked by the local authority by a subsequent notice in writing served on the occupier of the building, without prejudice, however, to their power to give another direction under that subsection.

## 11 Measurement of grit, dust and fumes by local authorities. **E+W+S**

- (1) This section applies to any furnace to which section 10(2) (duty to comply with prescribed requirements) for the time being applies and which is used—
  - (a) to burn, at a rate less than 1.02 tonnes an hour, solid matter other than pulverised fuel; or
  - (b) to burn, at a rate of less than 8.21 Megawatts, any liquid or gaseous matter.
- (2) The occupier of the building in which the furnace is situated may, by notice in writing given to the local authority, request that authority to make and record measurements of the grit, dust and fumes emitted from the furnace.
- (3) While a notice is in force under subsection (2)—
  - (a) the local authority shall from time to time make and record measurements of the grit, dust and fumes emitted from the furnace; and
  - (b) the occupier shall not be under a duty to comply with any requirements of regulations under subsection (2) of section 10 in relation to the furnace, except those imposed by virtue of paragraph (b) of that subsection;

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and any such notice given by the occupier of a building may be withdrawn by a subsequent notice in writing given to the local authority by him or any subsequent occupier of that building.

- (4) A direction under section 10(1) applying section 10(2) to a furnace which is used as mentioned in subsection (1)(a) or (b) of this section shall contain a statement of the effect of subsections (1) to (3) of this section.

## 12 Information about furnaces and fuel consumed. **E+W+S**

- (1) For the purpose of enabling the local authority properly to perform their functions under and in connection with sections 5 to 11, the local authority may, by notice in writing served on the occupier of any building, require the occupier to furnish to them, within fourteen days or such longer time as may be limited by the notice, such information as to the furnaces in the building and the fuel or waste burned in those furnaces as they may reasonably require for that purpose.
- (2) Any person who, having been duly served with a notice under subsection (1)—
- (a) fails to comply with the requirements of the notice within the time limited; or
  - (b) furnishes any information in reply to the notice which he knows to be false in a material particular,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### *Outdoor furnaces*

## 13 Grit and dust from outdoor furnaces, etc. **E+W+S**

- (1) Sections 5 to 12 shall apply in relation to the furnace of any fixed boiler or industrial plant as they apply in relation to a furnace in a building.
- (2) References in those sections to the occupier of the building shall, in relation to a furnace falling within subsection (1), be read as references to the person having possession of the boiler or plant.
- (3) The reference in section 6(4) (and the reference in paragraph 6(1) and (3) of Schedule 5) to the installation and to the purchase of a furnace shall, in relation to a furnace which is already contained in any fixed boiler or industrial plant, be read as a reference to attaching the boiler or plant to the building or fixing it to or installing it on any land and to purchasing it respectively.

### *Height of chimneys*

## 14 Height of chimneys for furnaces. **E+W+S**

- (1) This section applies to any furnace served by a chimney.
- (2) An occupier of a building shall not knowingly cause or permit a furnace to be used in the building—
- (a) to burn pulverised fuel;
  - (b) to burn, at a rate of 45.4 kilograms or more an hour, any other solid matter; or

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- (c) to burn, at a rate equivalent to 366.4 kilowatts or more, any liquid or gaseous matter,  
unless the height of the chimney serving the furnace has been approved for the purposes of this section and any conditions subject to which the approval was granted are complied with.
- (3) If on any day the occupier of a building contravenes subsection (2), he shall be guilty of an offence.
- (4) A person having possession of any fixed boiler or industrial plant, other than an exempted boiler or plant, shall not knowingly cause or permit a furnace of that boiler or plant to be used as mentioned in subsection (2), unless the height of the chimney serving the furnace has been approved for the purposes of this section and any conditions subject to which the approval was granted are complied with.
- (5) If on any day a person having possession of any boiler or plant contravenes subsection (4), he shall be guilty of an offence.
- (6) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) In this section “exempted boiler or plant” means a boiler or plant which is used or to be used wholly for any purpose prescribed in regulations made by the Secretary of State; and the height of a chimney is approved for the purposes of this section if approval is granted by the local authority or the Secretary of State under section 15.

## 15 Applications for approval of height of chimneys of furnaces. **E+W+S**

- (1) This section applies to the granting of approval of the height of a chimney for the purposes of section 14.
- (2) Approval shall not be granted by a local authority unless they are satisfied that the height of the chimney will be sufficient to prevent, so far as practicable, the smoke, grit, dust, gases or fumes emitted from the chimney from becoming prejudicial to health or a nuisance having regard to—
- the purpose of the chimney;
  - the position and descriptions of buildings near it;
  - the levels of the neighbouring ground; and
  - any other matters requiring consideration in the circumstances.
- (3) Approval may be granted without qualification or subject to conditions as to the rate or quality, or the rate and quality, of emissions from the chimney.
- (4) If a local authority to whom an application is duly made for approval fail to determine the application and to give a written notification of their decision to the applicant within four weeks of receiving the application or such longer period as may be agreed in writing between the applicant and the authority, the approval applied for shall be treated as having been granted without qualification.
- (5) If a local authority decide not to approve the height of a chimney, or to attach conditions to their approval, they shall give the applicant a written notification of their decision which—
- states their reasons for that decision; and
  - in the case of a decision not to approve the height of the chimney, specifies—



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- (i) the lowest height (if any) which they are prepared to approve without qualification; or
  - (ii) the lowest height which they are prepared to approve if approval is granted subject to any specified conditions,
  - or (if they think fit) both.
- (6) The applicant may within twenty-eight days of receiving a notification under subsection (5) appeal against the local authority’s decision to the Secretary of State.
- (7) On an appeal under this section the Secretary of State may confirm the decision appealed against or he may—
- (a) approve the height of the chimney without qualification or subject to conditions as to the rate or quality, or the rate and quality, of emissions from the chimney; or
  - (b) cancel any conditions imposed by the local authority or substitute for any conditions so imposed any other conditions which the authority had power to impose.
- (8) The Secretary of State shall give the appellant a written notification of his decision on an appeal under this section which—
- (a) states his reasons for the decision; and
  - (b) in the case of a decision not to approve the height of the chimney, specifies—
    - (i) the lowest height (if any) which he is prepared to approve without qualification; or
    - (ii) the lowest height which he is prepared to approve if approval is granted subject to any specified conditions,
 or (if he thinks fit) both.
- (9) References in this section to “the applicant” shall, in a case where the original applicant notifies the local authority that his interest in the application has been transferred to another person, be read as references to that other person.

## 16 Height of other chimneys. E+W+S

- (1) This section applies where plans for the erection or extension of a building outside Greater London or in an outer London borough, other than a building used or to be used wholly for one or more of the following purposes, that is to say—
- (a) as a residence or residences;
  - (b) as a shop or shops; or
  - (c) as an office or offices,
- are in accordance with building regulations deposited with the local authority and the plans show that it is proposed to construct a chimney, other than one serving a furnace, for carrying smoke, grit, dust or gases from the building.
- (2) The local authority shall reject the plans unless they are satisfied that the height of the chimney as shown on the plans will be sufficient to prevent, so far as practicable, the smoke, grit, dust or gases from becoming prejudicial to health or a nuisance having regard to—
- (a) the purpose of the chimney;
  - (b) the position and descriptions of buildings near it;
  - (c) the levels of the neighbouring ground; and



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- (d) any other matters requiring consideration in the circumstances.
- (3) If a local authority reject plans under the authority of this section—
- (a) the notice given under section 16(6) of the <sup>M1</sup>Building Act 1984 shall specify that the plans have been so rejected; and
  - (b) any person interested in the building may appeal to the Secretary of State.
- (4) On an appeal under subsection (3) the Secretary of State may confirm or cancel the rejection and, where he cancels the rejection, may, if he thinks it necessary, direct that the time for rejecting the plans otherwise than under the authority of this section shall be extended so as to run from the date on which his decision is notified to the local authority.
- (5) In the application of this section to Scotland—
- (a) any reference to plans deposited in accordance with building regulations shall be read as a reference to the plans, specifications and other information submitted with an application for a warrant under section 6 of the <sup>M2</sup>Building (Scotland) Act 1959;
  - (b) any reference to a local authority shall be read as a reference to a local authority within the meaning of that Act;
  - (c) any reference to the rejection of plans shall be read as a reference to the refusal of a warrant under section 6 of that Act;
- and subsections (3) and (4) shall be omitted.

**Marginal Citations**

- M1** 1984 c. 55.
- M2** 1959 c. 24.

*Smoke nuisances in Scotland*

<sup>F1</sup>17 ..... **S**

**Textual Amendments**

- F1** S. 17 repealed (1.4.1996) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3(xxxii)**

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