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STATUTORY INSTRUMENTS

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**2014 No. 3318**

**The Clean Air (Miscellaneous Provisions) (England) Regulations 2014**

**Citation, commencement, application and interpretation**

1.—(1) These Regulations may be cited as the Clean Air (Miscellaneous Provisions) (England) Regulations 2014 and come into force on 7th January 2015.

(2) These Regulations apply in relation to England only.

(3) In these Regulations—

- (a) any reference to a section by number alone is a reference to the section of that number in the Clean Air Act 1993;
- (b) “section 36 notice” means a notice served by a local authority under section 36(1) requiring information about air pollution from an occupier of premises.

**PART 1**

**Dark smoke – permitted periods for emissions from vessels**

**Dark smoke – emissions from vessels**

2.—(1) Emissions of dark smoke from a chimney of a vessel for not longer than the period specified in column 2 of Schedule 1 to these Regulations, in respect of the class of case specified in column 1 of that Schedule, are emissions to which section 1 (prohibition of dark smoke from chimneys) does not apply, provided that—

- (a) continuous emissions of dark smoke caused otherwise than by the soot blowing of a water tube boiler do not exceed—
  - (i) in the case of classes 1 and 2, 4 minutes;
  - (ii) in the case of natural draught oil-fired boiler furnaces in class 4, 10 minutes; and
- (b) in no case is black smoke emitted for more than 3 minutes in total in any period of 30 minutes.

(2) In paragraph (1)(b), “black smoke” means smoke which, if compared in the appropriate manner with a chart of the type known on 5th July 1956 (the date of the passing of the Clean Air Act 1956(2)) as the Ringelmann Chart(3), would appear to be as dark as or darker than shade 4 on the chart.

(3) For the purposes of Schedule 1, a vessel is not under way when it is at anchor or made fast to the shore or bottom, and a vessel which is aground is deemed to be under way.

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(1) Section 36 was amended by *S.I. 2000/1973* and *2013/755*, and partially repealed by Schedule 3 to the Pollution Prevention and Control Act 1999 (c. 24).

(2) *1956 c. 52*, repealed by Schedule 6 to the Clean Air Act 1993.

(3) The Ringelmann Chart British Standard 2742C:1957.

## PART 2

### Arrestment plant - exemptions

#### Arrestment plant exemptions

3. A class of furnace listed in column 1 of Schedule 2 to these Regulations, while used for a purpose set out in column 2 in relation to that class, is exempted from the provisions of section 6(1) (which requires the fitting of arrestment plant to new non-domestic furnaces).

## PART 3

### Height of furnace chimneys - exemptions

#### Exempted boilers or plant

4.—(1) The purposes set out in paragraph (2) are prescribed purposes in relation to section 14(7) (section 14 relates to the height of chimneys serving furnaces connected with boilers or industrial plant, but exempts from certain of its provisions any chimney serving the furnace of a boiler or plant used or to be used wholly for a prescribed purpose).

(2) The purposes are—

- (a) temporarily replacing any other boiler or plant which is—
  - (i) under inspection, maintenance or repair;
  - (ii) being rebuilt; or
  - (iii) being replaced by a permanent boiler or plant;
- (b) providing a temporary source of heat or power during any building operation or work of engineering construction (within the meaning of section 176(1) of the Factories Act 1961<sup>(4)</sup>);
- (c) providing a temporary source of heat or power for investigation or research;
- (d) providing products of combustion to heat other plant (whether directly or indirectly) to an operating temperature;
- (e) providing heat or power by mobile or transportable plant for the purposes of agriculture (within the meaning of section 109(3) of the Agriculture Act 1947<sup>(5)</sup>).

## PART 4

### Information about air pollution

#### Section 36 notices concerning emissions from chimneys and other outlets

5. A section 36 notice may relate to the emission of pollutants and other substances from any chimney, flue or other outlet used for the discharge, from any premises to the atmosphere, of any emission of any of the following kinds—

- (a) sulphur dioxide or particulate matter derived from any combustion process where the material being heated does not contribute to the emission;

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(4) 1961 c. 34; section 176(1) was amended by S.I. 1996/1592; there are other amendments but none is relevant.

(5) 1947 c. 48; there are no relevant amendments.

- (b) any gas or particulate matter derived from any combustion process where the material being heated contributes to the emission;
- (c) any gas or particulate matter derived from any non-combustion process or other similar industrial activity.

**Information which may be required by a section 36 notice**

6.—(1) Subject to paragraph (2), a section 36 notice must specify the premises to which it relates and may require the provision of estimates or other information, in respect of those premises, of any of the following kinds—

- (a) in relation to emissions of sulphur dioxide during any specified period—
  - (i) the total duration of all discharges from the specified premises during that period;
  - (ii) (aa) the temperature in degrees Celsius,  
(bb) the efflux velocity in metres per second, and  
(cc) the volume flow rates in cubic metres per hour,  
of the gases discharged from any specified chimney or flue or other specified outlet during that period, and the height in metres above ground level at which each such discharge takes place;
  - (iii) the total quantity of sulphur dioxide discharged during that period, to be ascertained, in the case of sulphur dioxide derived from a combustion process, either by calculation from the quantity of fuel or other matter burnt and its sulphur content, or, if the occupier of the premises and the local authority so agree, by direct measurement;
- (b) in relation to total emissions of particulate matter of all kinds during any specified period—
  - (i) the total duration of all discharges from the specified premises during that period;
  - (ii) (aa) the temperature in degrees Celsius,  
(bb) the efflux velocity in metres per second, and  
(cc) the volume flow rates in cubic metres per hour,  
of the gases discharged from any specified chimney or flue or other specified outlet during that period, and the height in metres above ground level at which each such discharge takes place;
  - (iii) the average concentration of particulates in the gases discharged during that period in grams per cubic metre at standard temperature and pressure (that is to say, a temperature of 15 degrees Celsius and a barometric pressure of one bar);
  - (iv) the total quantity of particulates discharged during that period;
- (c) in relation to emissions of gas other than sulphur dioxide or emissions of any specified particulate matter during any specified period—
  - (i) the total duration of all discharges from the specified premises during the period;
  - (ii) (aa) the temperature in degrees Celsius,  
(bb) the efflux velocity in metres per second, and  
(cc) the volume flow rates in cubic metres per hour,  
of the gases discharged from any specified chimney or flue or other specified outlet during that period, and the height in metres above ground level at which each such discharge takes place;

(iii) the average concentration of specified pollutants in the discharges made during the period;

(iv) the total quantity of specified pollutants discharged during the period.

(2) Where a section 36 notice relates to an emission which has taken place before the giving of the notice, it may not require information of a kind prescribed by paragraph (1) concerning that emission, except and insofar as that information is in the possession of the occupier of the specified premises or immediately available to that occupier.

(3) In this regulation, “specified”, in respect of any matter to which a section 36 notice relates, means specified in the relevant notice.

### **Provisions relating to section 36 notices**

7.—(1) A notice served by post pursuant to section 233 of the Local Government Act 1972(6) (service of notices by local authorities) must be sent in a prepaid letter by recorded delivery.

(2) A document purporting to be a copy of a notice signed by the proper officer of a local authority, and bearing a certificate purporting to be signed by the proper officer as to the date when and the person upon whom the notice was served, is evidence that a notice in the terms of the copy was duly authorised to be given by the local authority and was served in accordance with the facts stated in the certificate.

(3) In this regulation “proper officer” means an officer appointed by a local authority for the purposes of Part 5 of the Clean Air Act 1993 and includes any person authorised to act in that behalf by an officer so appointed.

### **Appeals**

8.—(1) An appeal made under section 37(1) (appeals against notices under section 36) must be made by notice in writing given to the Secretary of State.

(2) An appeal may only be made during the period allowed for compliance with the notice, to be determined in accordance with section 36(4).

(3) A notice of appeal under paragraph (1) must—

(a) be submitted in duplicate;

(b) state the grounds of the appeal by specifying the paragraph or paragraphs of section 37(1) under which the appeal is made, that is to say by specifying paragraph (a)(i), (a)(ii) or (b);

(c) be accompanied—

(i) in respect of each paragraph so specified in accordance with sub-paragraph (b), by a statement of the facts and reasons on which the appeal, or that part of the appeal, is based;

(ii) by a copy of the notice served under section 36 to which the appeal relates; and

(iii) by a copy of any other relevant documents.

(4) Subject to paragraph (5), the Secretary of State must send to the local authority a copy of the notice of appeal and of any other document submitted by the appellant under this regulation.

(6) 1972 c. 70; section 233 was amended by Schedule 2 to the Local Government (Miscellaneous Provisions) Act 1976 (c. 57), section 84 of, and paragraph 29 of Schedule 14 to, the Local Government Act 1985 (c. 51), Part 1 of Schedule 13 to the Education Reform Act 1988 (c. 40), paragraph 14(d) of Schedule 4 to the Police and Magistrates’ Courts Act 1994 (c. 29), paragraphs 22 and 31(d) of Schedule 6, and Part 5 of Schedule 7, to the Criminal Justice and Police Act 2001 (c. 16), paragraphs 1 and 21 of Schedule 13 to the Local Government and Public Involvement in Health Act 2007 (c. 28), paragraphs 10 and 32 of Schedule 6 to the Local Democracy, Economic Development and Construction Act 2009 (c. 20) and paragraphs 100 and 114 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13).

- (5) Where paragraph (6) applies, the Secretary of State must withhold from the local authority—
- (a) any statement provided under paragraph (3)(c)(i) in respect of any appeal made under paragraph (a)(i) or (a)(ii) of section 37(1); and
  - (b) any other document provided by the appellant which contains such information.
- (6) This paragraph applies if the Secretary of State determines that the disclosure of any information given by the appellant would—
- (a) prejudice to an unreasonable degree any private interest relating to a trade secret, or
  - (b) be contrary to the public interest.
- (7) The Secretary of State may, if the Secretary of State thinks fit, require the appellant or the local authority to submit within a specified period a further statement in writing in respect of any of the matters to which the appeal relates.
- (8) If, after considering the grounds of the appeal and any further statement provided under paragraph (7), the Secretary of State is satisfied that there is sufficient information for the purpose of reaching a decision as to the matters to which the appeal relates, the Secretary of State may decide the appeal without further investigation.
- (9) If the Secretary of State does not decide the appeal as described in paragraph (8), the Secretary of State must (except in a case where the Secretary of State causes a local inquiry to be held under section 59 (inquiries)(7)), if either party wishes it, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for that purpose.

### **Registers of information**

- 9.** A local authority must maintain a register of information in pursuance of these Regulations, and any such register must be adequately indexed so as to enable information relating to particular premises to be located and must contain—
- (a) (i) the information obtained by the authority by virtue of section 35(1) (obtaining information), or
  - (ii) if the Secretary of State has directed under section 37(2) in relation to any information that it must not be disclosed, the fact that the Secretary of State has so directed, and
  - (b) in relation to any appeal under section 37 against a section 36 notice served by the authority, being an appeal which the Secretary of State did not dismiss, the date, grounds and result of the appeal.

### **Exempted Crown premises**

- 10.** Section 36 does not apply to any premises used for the public service of the Crown which are—
- (a) named or described in column 1 of Schedule 3 to these Regulations; and
  - (b) situated at an address or location specified in respect of that name or description in column 2 of that Schedule.

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(7) Section 59 was amended by section 120 of, and paragraph 197 of Schedule 22 to, the Environment Act 1995 (c. 25).

## PART 5

### Revocations

#### **Revocations**

11. The Regulations specified in Schedule 4 to these Regulations are revoked<sup>(8)</sup>.

*Dan Rogerson*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

15th December 2014

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<sup>(8)</sup> The regulations specified in Schedule 4 were all made under legislation which was repealed and re-enacted by the Clean Air Act 1993, and so had effect as if they were made under the Clean Air Act 1993 by virtue of section 17 of the Interpretation Act 1978 (c. 30).