
STATUTORY INSTRUMENTS

1989 No. 1903

HEALTH AND SAFETY

The Health and Safety (Enforcing Authority) Regulations 1989

Made - - - - - *16th October 1989*
Laid before Parliament *24th October 1989*
Coming into force - - *1st April 1990*

The Secretary of State, in exercise of the powers conferred on him by sections 15(1) and (3)(a) and (c), 18(2) and 82(3)(a) of the Health and Safety at Work etc. Act 1974⁽¹⁾ (“the 1974 Act”) and of all other powers enabling him in that behalf and for the purpose of giving effect without modifications to proposals submitted to him by the Health and Safety Commission under section 11(2)(d) of the 1974 Act after the carrying out by the said Commission of consultations in accordance with section 50(3) of that Act, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Health and Safety (Enforcing Authority) Regulations 1989 and shall come into force on 1st April 1990.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—“the 1974 Act” means the Health and Safety at Work etc. Act 1974; “agricultural activities” includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding and keeping, including the management of livestock up to the point of slaughter or export from Great Britain, forestry, the use of land as grazing land, market gardens and nursery grounds and the preparation of land for agricultural use; and for this purpose “livestock breeding and keeping” does not include activities the main purpose of which is entertainment or the breeding or keeping of livestock at a shop; “the Commission” means the Health and Safety Commission; “common parts” means those parts of premises used in common by, or for providing common services to or common facilities for, the occupiers of the premises; “construction work” means a “building operation” or a “work of engineering construction” within the meanings assigned to those expressions by section 176(1) of the Factories Act 1961⁽²⁾; “contractor” means a self-employed person, or an employer of persons, carrying out construction work, except that in the case of a self-employed person who contracts to provide his labour only to another person, it shall mean that other person; “dangerous substance” has the meaning assigned to it by regulation 2(1) of the Classification, Packaging and Labelling of Dangerous

(1) 1974 c. 37; sections 15 and 50 were amended by the Employment Protection Act 1975 (c. 71), Schedule 15, paragraphs 6 and 16 respectively.
(2) 1961 c. 34.

Substances Regulations 1984(3); “dock premises” has the meaning assigned to it by regulation 2(1) of the Docks Regulations 1988(4); “electricity system” does not include the consumer’s installation within the meaning of regulation 3(1) of the Electricity Supply Regulations 1988(5); “the Executive” means the Health and Safety Executive; “fairground” means any part of premises which is for the time being used wholly or mainly for the operation of any fairground equipment, other than a coin-operated ride, non-powered childrens' playground equipment or a swimming pool slide; “gas” has the meaning assigned to it by section 48 of the Gas Act 1986(6); “gas fitting” has the meaning assigned to it by section 48 of the Gas Act 1986; “gas system” does not include a portable or mobile appliance supplied with gas from a cylinder, or the cylinder, pipes and other fittings used for supplying gas to that appliance; “ionising radiation” has the meaning assigned to it by regulation 2(1) of the Ionising Radiations Regulations 1985(7); “livestock” means any creature kept for the production of food, wool, skins or fur or for the purpose of any agricultural activity; “local authority” means—

- (a) in relation to England and Wales, a district council, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple, the Under-Treasurer of the Middle Temple or the Council of the Isles of Scilly;
- (b) in relation to Scotland, an islands or district council; “mine” has the meaning assigned to it by section 180 of the Mines and Quarries Act 1954(8); “office activities” includes any activity for the purposes of administration, clerical work, handling money, telephone and telegraph operating and the production of computer software by the use of computers; and for this purpose “clerical work” includes writing, book-keeping, sorting papers, filing, typing, duplicating, machinecalculating, drawing and the editorial preparation of matter for publication except where that preparation is on the premises where newspapers, magazines, periodicals or books are printed; “pleasure craft” has the meaning assigned to it by regulation 2(1) of the Docks Regulations 1988(9); “quarry” has the meaning assigned to it by section 180 of the Mines and Quarries Act 1954; “railway” means a railway or tramway with (in either case) a gauge of 350 millimetres or more; “theatre” does not include a cinema; “transport undertaking” means an undertaking primarily engaged in the transport of passengers or goods; “veterinary surgery” has the meaning assigned to it by section 27 of the Veterinary Surgeons Act 1966(10); “work” in relation to a gas fitting has the meaning assigned to it by regulation 2(1) of the Gas Safety (Installation and Use) Regulations 1984(11); “zoo” has the meaning assigned to it by section 1(2) of the Zoo Licensing Act 1981(12).

(2) In these Regulations (except regulation 4(8)), unless the context otherwise requires, any reference to the enforcing authority for premises or parts of premises is a reference to the enforcing authority for the relevant statutory provisions in relation to those premises or parts, as the case may be, and to any activity carried on in them.

- (3) In these Regulations, unless the context otherwise requires, any reference to—
 - (a) a numbered regulation or Schedule is a reference to the regulation of or Schedule to these Regulations so numbered; and
 - (b) a numbered paragraph is a reference to the paragraph so numbered in the regulation or Schedule in which that reference appears.

(3) S.I. 1984/1244, amended by S.I. 1986/1922 and 1988/766.
 (4) S.I. 1988/1655.
 (5) S.I. 1988/1057.
 (6) 1986 c. 44.
 (7) S.I. 1985/1333.
 (8) 1954 c. 70.
 (9) S.I. 1988/1655.
 (10) 1966 c. 36.
 (11) S.I. 1984/1358.
 (12) 1981 c. 37.

Local authorities to be enforcing authorities in certain cases

3.—(1) Where the main activity carried on in non-domestic premises is specified in Schedule 1, the local authority for the area in which those premises are situated shall be the enforcing authority for them, and the Executive shall be the enforcing authority in any other case.

(2) Where such premises are occupied by more than one occupier each part separately occupied shall be regarded as being separate premises for the purposes of paragraph (1).

(3) Where paragraph (2) applies, the local authority shall be the enforcing authority for the common parts, except that if the Executive is the enforcing authority for—

- (a) all other parts of the premises, the Executive shall be the enforcing authority for the common parts;
- (b) any other part of the premises and the occupier of that part has any obligations under the relevant statutory provisions for any matters appertaining to the common parts, the Executive shall be the enforcing authority for those provisions in respect of such matters.

(4) Paragraph (2) shall not apply to—

- (a) any land within the perimeter of an airport;
- (b) the tunnel system within the meaning of section 1(7) of the Channel Tunnel Act 1987 (13);
- (c) an offshore installation within the meaning of section 1(4) of the Mineral Workings (Offshore Installations) Act 1971(14);
- (d) a building or construction site, that is to say, premises where the only activities being undertaken are construction work and activities for the purpose of or in connection with such work;
- (e) the campus of a university, polytechnic, college, school or similar educational establishment;
- (f) a hospital; and the Executive shall be the enforcing authority for the whole of any such premises.

(5) In relation to a railway operated by the British Railways Board, London Regional Transport or a subsidiary of that body, Tyne and Wear Passenger Transport Executive or Strathclyde Passenger Transport Executive, notwithstanding paragraph (3), the Executive shall be the enforcing authority for the common parts in a railway station or in a goods yard served by the railway.

(6) Where any part of premises at or adjacent to a railway track or railway station is occupied by a railway undertaking not mentioned in paragraph (5), then notwithstanding paragraph (2), the Executive shall be the enforcing authority for the whole premises.

(7) This regulation shall have effect subject to regulations 4, 5 and 6.

Exceptions

4.—(1) The Executive shall be the enforcing authority for—

- (a) the enforcement of any of the relevant statutory provisions against a body specified in paragraph (3) or the officers or servants of such a body;
- (b) any part of premises occupied by such a body.

(2) Where premises are mainly occupied by a body specified in paragraph (3) and are partly occupied by another person for the purpose of providing services at the premises for that body, the Executive shall be the enforcing authority for the part of the premises occupied by that other person.

(3) The bodies referred to in paragraphs (1) and (2) are—

(13) 1987 c. 53.

(14) 1971 c. 61; section 1 was substituted by section 24 of the Oil and Gas (Enterprise) Act 1982 (c. 23).

- (a) a local authority as defined in regulation 2;
 - (b) Parish Councils in England and Community Councils in Wales and Scotland;
 - (c) any other local authority within the meaning of section 53(1) of the 1974 Act;
 - (d) a police authority or the Receiver for the Metropolitan Police District;
 - (e) a fire authority within the meaning of section 43(1) of the Fire Precautions Act 1971⁽¹⁵⁾;
 - (f) a headquarters or an organisation designated for the purposes of the International Headquarters and Defence Organisation Act 1964⁽¹⁶⁾; or a service authority of a visiting force within the meaning of section 12 of the Visiting Forces Act 1952⁽¹⁷⁾;
 - (g) the United Kingdom Atomic Energy Authority;
 - (h) the Crown, but regulation 3 shall apply to any part of premises occupied by the Executive and to any activity carried on there.
- (4) The Executive shall be the enforcing authority for premises if the main activity carried on there is indoor sports and any body referred to in paragraph (3)(a) to (c) has any duty under section 4 of the 1974 Act in respect of those premises or any plant therein.
- (5) The Executive shall be the enforcing authority for—
- (a) section 6 of the 1974 Act;
 - (b) the other relevant statutory provisions in respect of any activity specified in Schedule 2 (whether or not it is the main activity carried on in premises).
- (6) Regulation 3 and the preceding provisions of this regulation shall have effect subject to any provisions made for enforcement responsibility by other regulations made under the 1974 Act or by any of the existing statutory provisions.
- (7) The preceding provisions of this regulation shall have effect subject to regulations 5 and 6.
- (8) Notwithstanding regulation 3 and the preceding provisions of this regulation, an authority empowered to grant a licence for a factory, magazine or store or to register premises under the 1875 Act shall be the enforcing authority for the 1875 Act in relation to such factory, magazine, store or premises, as the case may be; and in this paragraph “the 1875 Act” means such provisions of the Explosives Act 1875⁽¹⁸⁾ and such Orders in Council, Orders, Byelaws, Regulations and Rules made thereunder as are relevant statutory provisions.

Arrangements enabling responsibility for enforcement to be transferred

5.—(1) The responsibility for enforcing any of the relevant statutory provisions in respect of any particular premises, part of premises, or any activity carried on there may be transferred from the Executive to the local authority or from the local authority to the Executive.

(2) A transfer may be made only by agreement between the enforcing authority which has the current responsibility and the authority to which it proposed to transfer it, or by the Commission.

(3) Where a transfer has been made, the authority to which responsibility has been transferred shall cause notice of the transfer to be given to persons affected by it, and where a transfer has been made by the Commission the Commission shall cause notice of it to be given to both enforcing authorities concerned.

(4) The preceding provisions of this regulation shall not apply to any part of premises occupied by the Crown or to any activity carried on there but responsibility for enforcing any of the relevant statutory provisions in respect of office activities and the premises used for them may

(15) 1971 c. 40.

(16) 1964 c. 5.

(17) 1952 c. 67.

(18) 1875 c. 17; the relevant amending instrument is S.I. 1974/1885.

be transferred by an agreement between the Executive, the local authority concerned and the Government Department or other public body concerned.

Arrangements enabling responsibility for enforcement to be assigned in cases of uncertainty

6.—(1) The responsibility for enforcing any of the relevant statutory provisions in respect of any particular premises, part of premises or any activity carried on there may be assigned to the Executive or to the local authority; and an assignment under this paragraph may be made only by the Executive and the local authority jointly and only where they agree—

- (a) that there is uncertainty in the particular case as to what are their respective responsibilities by virtue of regulations made under section 18(2) of the 1974 Act; and
- (b) which authority is more appropriate to be responsible for enforcement in that case; and where such an assignment is made the authority to which responsibility has been assigned shall cause notice of assignment to be given to persons affected by it.

(2) For the purpose of removing uncertainty in any particular case as to what are their respective responsibilities by virtue of regulations made under section 18(2) of the 1974 Act either the Executive or the local authority may apply to the Commission and where the Commission considers that there is uncertainty it shall, after considering the circumstances and any views which may have been expressed to them by either enforcing authority or by persons affected, assign responsibility to whichever authority it considers appropriate; and where such an assignment is made the Commission shall cause notice of the assignment to be given to both enforcing authorities concerned and to persons affected by it.

Repeals and revocations

7.—(1) Sections 52(5) and 83(5) of the Offices, Shops and Railway Premises Act 1963(19) are hereby repealed.

(2) The following Regulations are hereby revoked—

- (a) The Health and Safety (Enforcing Authority) Regulations 1977(20);
- (b) The Health and Safety (Enforcing Authority) (Amendment) Regulations 1980(21);
- (c) The Health and Safety (Enforcing Authority) (Amendment) Regulations 1985(22).

Signed by order of the Secretary of State

Department of Employment
16th October 1989

Patrick Nicholls
Parliamentary Under Secretary of State,

(19) 1963 c. 41.
(20) S.I. 1977/746.
(21) S.I. 1980/1744.
(22) S.I. 1985/1107.

SCHEDULE 1

Regulation 3(1)

MAIN ACTIVITIES WHICH DETERMINE WHETHER LOCAL
AUTHORITIES WILL BE ENFORCING AUTHORITIES

1. The sale or storage of goods for retail or wholesale distribution except—
 - (a) where it is part of the business of a transport undertaking;
 - (b) at container depots where the main activity is the storage of goods in the course of transit to or from dock premises, an airport or a railway;
 - (c) where the main activity is the sale or storage for wholesale distribution of any dangerous substance;
 - (d) where the main activity is the sale or storage of water or sewage or their by-products or natural or town gas; and for the purposes of this paragraph where the main activity carried on in premises is the sale and fitting of motor car tyres, exhausts, windscreens or sunroofs the main activity shall be deemed to be the sale of goods.
2. The display or demonstration of goods at an exhibition for the purposes of offer or advertisement for sale.
3. Office activities.
4. Catering services.
5. The provision of permanent or temporary residential accommodation including the provision of a site for caravans or campers.
6. Consumer services provided in a shop except dry cleaning or radio and television repairs, and in this paragraph “consumer services” means services of a type ordinarily supplied to persons who receive them otherwise than in the course of a trade, business or other undertaking carried on by them (whether for profit or not).
7. Cleaning (wet or dry) in coin operated units in launderettes and similar premises.
8. The use of a bath, sauna or solarium, massaging, hair transplanting, skin piercing, manicuring or other cosmetic services and therapeutic treatments, except where they are carried out under the supervision or control of a registered medical practitioner, a dentist registered under the Dentists Act 1984⁽²³⁾, a physiotherapist, an osteopath or a chiropractor.
9. The practice or presentation of the arts, sports, games, entertainment or other cultural or recreational activities except where carried on in a museum, art gallery or theatre or where the main activity is the exhibition of a cave to the public.
10. The hiring out of pleasure craft for use on inland waters.
11. The care, treatment, accommodation or exhibition of animals, birds or other creatures, except where the main activity is horse breeding or horse training at a stable, or is an agricultural activity or veterinary surgery.
12. The activities of an undertaker, except where the main activity is embalming or the making of coffins.
13. Church worship or religious meetings.

(23) 1984 c. 24.

SCHEDULE 2

Regulation 4(5)(b)

ACTIVITIES IN RESPECT OF WHICH THE HEALTH AND SAFETY EXECUTIVE IS THE ENFORCING AUTHORITY

1. Any activity in a mine or quarry other than a quarry in respect of which notice of abandonment has been given under section 139(2) of the Mines and Quarries Act 1954.
2. Any activity in a fairground.
3. Any activity in premises occupied by a radio, television or film undertaking in which the activity of broadcasting, recording or filming is carried on, and the activity of broadcasting, recording or filming wherever carried on, and for this purpose “film” includes video.
4. The following activities carried on at any premises by persons who do not normally work in the premises—
 - (a) construction work if—
 - (i) section 127(6) of the Factories Act 1961 (which requires certain work to be notified to an inspector) applies to such work; or
 - (ii) the whole or part of the work contracted to be undertaken by the contractor at the premises is to the external fabric or other external part of a building or structure; or
 - (iii) it is carried out in a physically segregated area of the premises, the activities normally carried out in that area have been suspended for the purpose of enabling the construction work to be carried out, the contractor has authority to exclude from that area persons who are not attending in connection with the carrying out of the work and the work is not the maintenance of insulation on pipes, boilers or other parts of heating or water systems or its removal from them;
 - (b) the installation, maintenance or repair of any gas system, or any work in relation to a gas fitting;
 - (c) the installation, maintenance or repair of electricity systems;
 - (d) work with ionising radiations except work in one or more of the categories set out in Schedule 3 to the Ionising Radiations Regulations 1985.
5. The use of ionising radiations for medical exposure (within the meaning of regulation 2(1) of the Ionising Radiations Regulations 1985).
6. Any activity in premises occupied by a radiography undertaking in which there is carried on any work with ionising radiations.
7. Agricultural activities, and any activity at an agricultural show which involves the handling of livestock or the working of agricultural equipment.
8. Any activity on board a sea-going ship.
9. Any activity in relation to a ski slope, ski lift, ski tow or cable car.
10. Fish, maggot and game breeding except in a zoo.

EXPLANATORY NOTE

This note is not part of the Regulations)

These Regulations re-enact the Health and Safety (Enforcing Authority) Regulations 1977 (“the 1977 Regulations”) with amendments. The 1977 Regulations made provision with respect to enforcement by local authorities of the Health and Safety at Work etc. Act 1974 (“the 1974 Act”) and the other relevant statutory provisions within the meaning of that Act. In addition to minor and drafting amendments, these Regulations make the following changes of substance:—

The Regulations re-enact the main provision of the 1977 Regulations which provided that where the main activity carried on in any premises was specified in Schedule 1 to those Regulations then, subject to specified exceptions, the local authority was the enforcing to these Regulations includes activities not specified in Schedule 1 to the 1977 Regulations. The new activities are:— the display or demonstration of goods at exhibitions; cosmetic or therapeutic treatments; sports, cultural or recreational activities; hiring out of pleasure craft for use on inland waters; care, treatment, accommodation or exhibition of animals, activities of an undertaker; and church worship or religious meetings.

The Regulations introduce a new provision for multi-occupied premises. Subject to specified exceptions, each part separately occupied is to be regarded as being separate premises for the purposes of enforcement allocation (regulation 3(2)).

Regulation 4(1) of the 1977 Regulations is replaced with the following changes:— Notwithstanding that the main activity carried on in premises is listed in Schedule 1, the Health and Safety Executive is made the enforcing authority for any part of premises occupied by a body specified in the regulation, and for enforcement against such a body or its officers or servants. The Executive is also made the enforcing authority for any part of the premises occupied by another person for the purpose of providing services at the premises for a specified body. The provision in the 1977 Regulations which made the Executive the enforcing authority for premises “controlled” by a specified body has not been re-enacted. Parish Councils, Community Councils, visiting forces, international headquarters and defence organisations are added to the list of bodies which were specified in the 1977 Regulations (regulation 4(1) to (3)).

The Regulations make the Executive the enforcing authority for premises where the main activity is indoor sports if specified conditions are met (regulation 4(4)).

The Regulations make the Executive the enforcing authority for the enforcement of section 6 of the 1974 Act (general duties of manufacturers etc. as regards activities and substances) even though the main activity carried on in the premises is listed in Schedule 1 (regulation 4(5)(a)).

The activities set out in Schedule 2 to these Regulations are allocated for enforcement by (regulation 4(5)(b)). Schedule 2 replaces regulation 4(2) of the 1977 Regulations. It excludes the previous references to work with water and telecommunications systems, modifies the references to construction work and to work with gas and electricity systems, and includes other activities.

The Regulations provide that, regardless of main activity, the licensing or registration authority for an explosives factory, magazine, store or premises for keeping explosives shall be the enforcing authority for such provisions of the Explosives Act 1875 and legislation made thereunder as are relevant statutory provisions (regulation 4(8)).

The Regulations enable enforcement responsibility to be assigned by the Executive and local authority jointly (to either of them) where they agree there is uncertainty in the particular case as

to which one is the enforcing authority. Under the 1977 Regulations an assignment could only be made by the Health and Safety Commission (regulation 6(1)).

The Regulations repeal sections 52(5) and 83(5) of the Offices, Shops and Railway Premises Act 1963 (which relate to enforcement of that Act in places of public entertainment). The Regulations also revoke the 1977 Regulations and Regulations amending them, namely the Health and Safety (Enforcing Authority) (Amendment) Regulations 1980 and the Health and Safety (Enforcing Authority) (Amendment) Regulations 1985 (regulation 7).