

SCHEDULE 2

Regulation 16(2)

ENFORCEMENT

Appointment of inspectors

1.—(1) The Secretary of State may appoint as inspectors (under whatever title he may from time to time determine) such persons having suitable qualifications as he thinks necessary for carrying into effect these Regulations, and may terminate any appointment made under this paragraph.

(2) Every appointment of a person as an inspector under this paragraph shall be made by an instrument in writing specifying which of the powers conferred on inspectors by these Regulations are to be exercisable by the person appointed; and an inspector shall in right of his appointment under this paragraph be entitled to exercise only such of those powers as are so specified.

(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 Secretary of State.

(4) An inspector shall, if so required when exercising or seeking to exercise any power conferred on him by these Regulations, produce his instrument of appointment or a duly authenticated copy thereof.

Powers of inspectors

2.—(1) Subject to the provisions of paragraph 1 and this paragraph, an inspector may for the purpose of carrying into effect these Regulations exercise the powers set out in sub-paragraph (2).

(2) The powers of an inspector are the following, namely—

- (a) at any reasonable time (or in a situation which in his opinion 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 purposes mentioned in sub-paragraph (1);
- (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 paragraph (b), on entering any premises by virtue of paragraph (a) to take with him—
 - (i) any other person duly authorised by the Secretary of State; and
 - (ii) any equipment or material 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 sub-paragraph (1);
- (e) 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;
- (f) to require the production of, inspect, and take copies of, or of any entry in—
 - (i) any records which by virtue of these Regulations are required to be kept, and
 - (ii) any other books, records or documents which it is necessary for him to see for the purposes of any examination or investigation under paragraph (d);
- (g) 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

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as are necessary to enable the inspector to exercise any of the powers conferred on him by this sub-paragraph;

(h) any other power which is necessary for the purpose mentioned in sub-paragraph (1).

(3) No answer given by a person in pursuance of a requirement imposed under sub-paragraph (2) (e) shall be admissible in evidence against that person or the husband or wife of that person in any proceedings.

(4) Nothing in this paragraph 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, an order for the production of documents in an action in the Court of Session.

Improvement notices

3. If an inspector is of the opinion that a person—

- (a) is contravening one or more of these Regulations; or
- (b) has contravened one or more of these Regulations in circumstances that make it likely that the contravention will continue or be repeated,

he may serve on him a notice (in this Schedule 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 matter occasioning it within such period (ending not earlier than the period within which an appeal against the notice can be brought under paragraph (6)) as may be specified in the notice.

Prohibition notices

4.—(1) This paragraph 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 these Regulations apply or will, if the activities are so carried on, apply.

(2) If as regards any activities to which this paragraph applies an inspector is of the opinion that, as 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 Schedule 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 these Regulations, state that he is of that opinion, specify the regulation or regulations 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) and any associated contraventions of provisions so specified in pursuance of paragraph (c) have been remedied.

(4) A direction contained in a prohibition notice in pursuance of sub-paragraph (3)(d) shall take effect—

- (a) at the end of the period specified in the notice; or

- (b) if the notice so declares, immediately.

Provisions supplementary to paragraphs 3 and 4

5.—(1) In this paragraph “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 an improvement notice or 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 paragraph 3 or paragraph 4(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.

Appeal against improvement or prohibition notice

6.—(1) In this paragraph “a notice” means an improvement or prohibition notice.

(2) A person on whom a notice is served may within 21 days from the date of its service appeal to an employment 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 paragraph is brought against a notice within the period allowed under the preceding sub-paragraph, 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 employment tribunal under this paragraph.

Restrictions on disclosure of information

7.—(1) In this paragraph —

“relevant information” means information obtained by an inspector in pursuance of a requirement imposed under paragraph 2;

“relevant statutory provisions” means the provisions of Part 6 of the Transport Act 1968 and of any orders or regulations made under powers contained in that Part; and

“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 the following sub-paragraph, no relevant information shall be disclosed without the consent of the person by whom it was furnished.

(3) The preceding sub-paragraph shall not apply to -

- (a) disclosure of information to a government department;

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- (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 or under these Regulations;
 - (c) without prejudice to paragraph (a), disclosure by the recipient of information to—
 - (i) an officer of a local authority who is authorised by that authority to receive it; or
 - (ii) a constable authorised by a chief officer of police to receive it; or
 - (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.
- (4) A person to whom information is disclosed in pursuance of sub-paragraph (3) shall not use the information for a purpose other than -
- (a) in a case falling within sub-paragraph (3)(a), a purpose of a government department or local authority in connection with these Regulations or with the relevant statutory provisions, or any enactment whatsoever relating to working time;
 - (b) in the case of information given to a constable, the purposes of the police in connection with these Regulations, the relevant statutory provisions or any enactment relating to working time.
- (5) A person shall not disclose any information obtained by him as a result of the exercise of any power conferred by paragraph 2 (including in particular any information with respect to 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 functions; or
 - (b) for the purposes of any legal proceedings; or
 - (c) with the relevant consent.

In this sub-paragraph “the relevant consent” means, in the case of information furnished in pursuance of a requirement imposed under paragraph 2, the consent 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.

(6) Notwithstanding anything in sub-paragraph (5) an inspector shall, in circumstances in which it is necessary to do so for the purpose of assisting in keeping persons (or the representatives of persons) adequately informed about matters affecting their health, safety and welfare or working time, 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 that sub-paragraph which relates to their working environment; and
- (b) information with respect to any action which he has taken or proposes to take in or in connection with the performance of his functions in relation to their working environment;

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

(7) Notwithstanding anything in sub-paragraph (5), a person who has obtained such information as is referred to in that sub-paragraph 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 the relevant facts observed by him in the course of exercising any of the powers referred to in that sub-paragraph.