



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

Miscellaneous and supplementary

45 Default powers.

- (1) Where, in the case of a local authority who are an enforcing authority, [^{F1}the Executive] is of the opinion that an investigation should be made as to whether that local authority have failed to perform any of their enforcement functions [^{F1}the Executive] may make a report to the Secretary of State.
- (2) The Secretary of State may, after considering a report submitted to him under the preceding subsection, cause a local inquiry to be held; and the provisions of subsections (2) to (5) of section 250 of the ^{M1}Local Government Act 1972 as to local inquiries shall, without prejudice to the generality of subsection (1) of that section, apply to a local inquiry so held as they apply to a local inquiry held in pursuance of that section.
- (3) If the Secretary of State is satisfied, after having caused a local inquiry to be held into the matter, that a local authority have failed to perform any of their enforcement functions, he may make an order declaring the authority to be in default.
- (4) An order made by virtue of the preceding subsection which declares an authority to be in default may, for the purpose of remedying the default, direct the authority (hereafter in this section referred to as “the defaulting authority”) to perform such of their enforcement functions as are specified in the order in such manner as may be so specified and may specify the time or times within which those functions are to be performed by the authority.
- (5) If the defaulting authority fail to comply with any direction contained in such an order the Secretary of State may, instead of enforcing the order by mandamus, make an

Changes to legislation: There are currently no known outstanding effects for the
Health and Safety at Work etc. Act 1974, Section 45. (See end of Document for details)

order transferring to the Executive such of the enforcement functions of the defaulting authority as he thinks fit.

- (6) Where any enforcement functions of the defaulting authority are transferred in pursuance of the preceding subsection, the amount of any expenses which the Executive certifies were incurred by it in performing those functions shall on demand be paid to it by the defaulting authority.
- (7) Any expenses which in pursuance of the preceding subsection are required to be paid by the defaulting authority in respect of any enforcement functions transferred in pursuance of this section shall be defrayed by the authority in the like manner, and shall be debited to the like account, as if the enforcement functions had not been transferred and the expenses had been incurred by the authority in performing them.
- (8) Where the defaulting authority are required to defray any such expenses the authority shall have the like powers for the purpose of raising the money for defraying those expenses as they would have had for the purpose of raising money required for defraying expenses incurred for the purpose of the enforcement functions in question.
- (9) An order transferring any enforcement functions of the defaulting authority in pursuance of subsection (5) above may provide for the transfer to the Executive of such of the rights, liabilities and obligations of the authority as the Secretary of State considers appropriate; and where such an order is revoked the Secretary of State may, by the revoking order or a subsequent order, make such provision as he considers appropriate with respect to any rights, liabilities and obligations held by the Executive for the purposes of the transferred enforcement functions.
- (10) The Secretary of State may by order vary or revoke any order previously made by him in pursuance of this section.
- (11) In this section “enforcement functions”, in relation to a local authority, means the functions of the authority as an enforcing authority.
- (12) In the application of this section to Scotland—
 - (a) in subsection (2) for the words “subsections (2) to (5) of section 250 of the ^{M2}Local Government Act 1972” there shall be substituted the words “subsections (2) to (8) of section 210 of the ^{M3}Local Government (Scotland) Act 1973”, except that before 16th May 1975 for the said words there shall be substituted the words “subsections (2) to (9) of section 355 of the ^{M4}Local Government (Scotland) Act 1947”;
 - (b) in subsection (5) the words “instead of enforcing the order by mandamus” shall be omitted.

Textual Amendments

- F1** Words in s. 45(1) substituted (1.4.2008) by [The Legislative Reform \(Health and Safety Executive\) Order 2008 \(S.I. 2008/960\)](#), [art. 15](#) (with [art. 21](#), [Sch. 2](#))

Modifications etc. (not altering text)

- C1** Pt. 1 modified (1.1.2018) by [The Ionising Radiations Regulations 2017 \(S.I. 2017/1075\)](#), [regs. 1\(2\), 2\(3\)](#) (with [regs. 2\(5\), 3](#), [Sch. 8](#))
- C2** Ss. 1–25, 26, 27, 28, 30, 33, 34–59, 80, 81 and 82 applied by [S.I. 1989/840](#), [arts. 2–10](#)
- C3** Ss. 1–59, 80–82 applied (11.7.2001) by [S.I. 2001/2127](#), [arts. 4\(1\), 5\(1\)\(2\), 6\(1\), 7\(1\), 8\(1\), 10](#) (with [art. 11](#)) (as amended by [S.I. 2009/1750](#), [art. 2\(2\)\(4\)](#))

Changes to legislation: There are currently no known outstanding effects for the Health and Safety at Work etc. Act 1974, Section 45. (See end of Document for details)

- C4** Ss. 1-59, 80-82 applied (temp.) (5.8.2009) by The Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2001 (S.I. 2001/2127), arts. 8A, 8B (as inserted by S.I. 2009/1750, **art. 2(3)**)
- C5** Ss. 1-59 applied by S.I. 2001/2127 art. 8A 8B (as inserted (E.W.S.) (6.4.2011) by The Health and Safety at Work etc. Act 1974 (Application outside Great Britain) (Variation) Order 2011 (S.I. 2011/745), arts. 1(1), **3(2)**)

Marginal Citations

- M1** 1972 c. 70.
M2 1972 c. 70.
M3 1973 c. 65.
M4 1947 c. 43.

Changes to legislation:

There are currently no known outstanding effects for the Health and Safety at Work etc. Act 1974, Section 45.