Clean Air Act 1993

1993 CHAPTER 11

An Act to consolidate the Clean Air Acts 1956 and 1968 and certain related enactments, with amendments to give effect to recommendations of the Law Commission and the Scottish Law Commission. [27th May 1993]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

C1 [A table showing the derivation of the provisions of this consolidation will be found at the end of this Act. The table has no official status.]
Act: transfer of functions (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**
Act: applied (with modifications) (23.6.1999) by S.I. 1999/1736, **art. 15**

C2 Act modified (E.) (6.4.2010) by The Cowes Port Health Authority Order 2010 (S.I. 2010/1216), arts. 1(1), 4, **Sch.**

C3 Act modified (E.) (6.4.2010) by The Southampton Port Health Authority Order 2010 (S.I. 2010/1218), arts. 1(1), 4, **Sch.**

C4 Act modified (E.) (6.4.2010) by The Portsmouth Port Health Authority Order 2010 (S.I. 2010/1217), arts. 1(1), 4, **Sch.**

C5 Act modified (E.) (6.4.2010) by The Bristol Port Health Authority Order 2010 (S.I. 2010/1214), arts. 1, 4, **Sch.**

C6 Act applied (with modifications) (E.) (24.3.2011) by The Hull and Goole Port Health Authority Order 2011 (S.I. 2011/939), arts. 1(1), 9, **Sch. 2**

C7 Act applied (with modifications) (E.) (14.6.2016) by The River Tees Port Health Authority Order 2016 (S.I. 2016/644), arts. 1(1), 9, **Sch. 2**

Commencement Information

I1 Act wholly in force at 27.8.1993 see s. 68(2)

Status: *Point in time view as at 01/04/2018. This version of this Act contains provisions that are prospective.*
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PART I

DARK SMOKE

1 Prohibition of dark smoke from chimneys.

(1) Dark smoke shall not be emitted from a chimney of any building, and if, on any day, dark smoke is so emitted, the occupier of the building shall be guilty of an offence.

(2) Dark smoke shall not be emitted from a chimney (not being a chimney of a building) which serves the furnace of any fixed boiler or industrial plant, and if, on any day, dark smoke is so emitted, the person having possession of the boiler or plant shall be guilty of an offence.

(3) This section does not apply to emissions of smoke from any chimney, in such classes of case and subject to such limitations as may be prescribed in regulations made by the Secretary of State, lasting for not longer than such periods as may be so prescribed.

(4) In any proceedings for an offence under this section, it shall be a defence to prove—

(a) that the alleged emission was solely due to the lighting up of a furnace which was cold and that all practicable steps had been taken to prevent or minimise the emission of dark smoke;

(b) that the alleged emission was solely due to some failure of a furnace, or of apparatus used in connection with a furnace, and that—

(i) the failure could not reasonably have been foreseen, or, if foreseen, could not reasonably have been provided against; and

(ii) the alleged emission could not reasonably have been prevented by action taken after the failure occurred; or

(c) that the alleged emission was solely due to the use of unsuitable fuel and that—

(i) suitable fuel was unobtainable and the least unsuitable fuel which was available was used; and

(ii) all practicable steps had been taken to prevent or minimise the emission of dark smoke as the result of the use of that fuel;

or that the alleged emission was due to the combination of two or more of the causes specified in paragraphs (a) to (c) and that the other conditions specified in those paragraphs are satisfied in relation to those causes respectively.

(5) A person guilty of an offence under this section shall be liable on summary conviction—

(a) in the case of a contravention of subsection (1) as respects a chimney of a private dwelling, to a fine not exceeding level 3 on the standard scale; and

(b) in any other case, to a fine not exceeding level 5 on the standard scale.

(6) This section has effect subject to section 51 (duty to notify offences to occupier or other person liable).

Modifications etc. (not altering text)

C8 S. 1 power to exclude conferred (27.8.1993) by 1993 c. 11, **s. 45(1)(a)**

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2 Prohibition of dark smoke from industrial or trade premises.

(1) Dark smoke shall not be emitted from any industrial or trade premises and if, on any day, dark smoke is so emitted the occupier of the premises and any person who causes or permits the emission shall be guilty of an offence.

(2) This section does not apply—
- (a) to the emission of dark smoke from any chimney to which section 1 above applies; or
- (b) to the emission of dark smoke caused by the burning of any matter prescribed in regulations made by the Secretary of State, subject to compliance with such conditions (if any) as may be so prescribed.

(3) In proceedings for an offence under this section, there shall be taken to have been an emission of dark smoke from industrial or trade premises in any case where—
- (a) material is burned on those premises; and
- (b) the circumstances are such that the burning would be likely to give rise to the emission of dark smoke,

unless the occupier or any person who caused or permitted the burning shows that no dark smoke was emitted.

(4) In proceedings for an offence under this section, it shall be a defence to prove—
- (a) that the alleged emission was inadvertent; and
- (b) that all practicable steps had been taken to prevent or minimise the emission of dark smoke.

(5) A person guilty of an offence under this section shall be liable on summary conviction to **[**[F1]a fine not exceeding **[**[F2]£20,000**][**[F1]a fine**]]** .

(6) In this section "industrial or trade premises" means—
- (a) premises used for any industrial or trade purposes; or
- (b) premises not so used on which matter is burnt in connection with any industrial or trade process.

(7) This section has effect subject to section 51 (duty to notify offences to occupier or other person liable).

Textual Amendments

F1 Words in s. 2(5) substituted (E.W.) (12.3.2015) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 (S.I. 2015/664), reg. 1(1), **Sch. 4 para. 25** (with reg. 5(1))

F2 Words in s. 5(2) substituted (28.7.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 195** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 2**; S.I. 1996/186, **art. 3**

3 Meaning of "dark smoke".

(1) In this Act "dark smoke" means smoke which, if compared in the appropriate manner with a chart of the [M1]type known on 5th July 1956 (the date of the passing of the Clean Air Act 1956) as the Ringelmann Chart, would appear to be as dark as or darker than shade 2 on the chart.

(2) For the avoidance of doubt it is hereby declared that in proceedings—

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(a) for an offence under section 1 or 2 (prohibition of emissions of dark smoke); [F3] . . .

[F3](b) . . . . . .

the court may be satisfied that smoke is or is not dark smoke as defined in subsection (1) notwithstanding that there has been no actual comparison of the smoke with a chart of the type mentioned in that subsection.

(3) Without prejudice to the generality of subsections (1) and (2), if the Secretary of State by regulations prescribes any method of ascertaining whether smoke is dark smoke as defined in subsection (1), proof in any such proceedings as are mentioned in subsection (2)—

(a) that that method was properly applied, and

(b) that the smoke was thereby ascertained to be or not to be dark smoke as so defined,

shall be accepted as sufficient.

Textual Amendments

F3 S. 3(2)(b) and word "or" immediately preceding 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)**

Marginal Citations

M1 1956 c. 52.

PART II

SMOKE, GRIT, DUST AND FUMES

PROSPECTIVE

Installation of furnaces

4 Requirement that new furnaces shall be so far as practicable smokeless.

(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—

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(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.

(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.

(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)

C9 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.

(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

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(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.

(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.

(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

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(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 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.

(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.

(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.

(1) If a furnace in a building is used—

(a) to burn pulverised fuel;

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(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.

(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.

(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)—

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(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;

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.

(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.

(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.

(1) This section applies to any furnace served by a chimney.

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(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
  (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.

(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—
  (a) the purpose of the chimney;
  (b) the position and descriptions of buildings near it;
  (c) the levels of the neighbouring ground; and
  (d) 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.

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(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—
  (a) states their reasons for that 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 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.

(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

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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

(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 [M2]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 **[**[F4]building warrant under section 9 of the Building (Scotland) Act 2003 (asp 8)**]**;

(b) any reference to a local authority shall be read as a reference to a **[**[F5]verifier**]** 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 **[**[F6]building warrant under section 9**]** of that Act;

and subsections (3) and (4) shall be omitted.

Textual Amendments

F4 Words in s. 16(5)(a) substituted (S.) (1.5.2005) by Building (Scotland) Act 2003 (asp 8), s. 59(1), **Sch. 6 para. 20(a)** (with s. 53); S.S.I. 2004/404, art. 2(1)

F5 Word in s. 16(5)(b) substituted (S.) (1.5.2005) by Building (Scotland) Act 2003 (asp 8), s. 59(1), **Sch. 6 para. 20(b)** (with s. 53); S.S.I. 2004/404, art. 2(1)

F6 Words in s. 16(5)(c) substituted (S.) (1.5.2005) by Building (Scotland) Act 2003 (asp 8), s. 59(1), **Sch. 6 para. 20(c)** (with s. 53); S.S.I. 2004/404, art. 2(1)

Modifications etc. (not altering text)

C10 S. 16 modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3, Table 9 (as substituted (E.W.) (1.10.2011) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), reg. 1(b), **Sch. 1**)

C11 S. 16 modified (E.W.) (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), Sch. 23 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

Marginal Citations

M2 1984 c. 55.

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Smoke nuisances in Scotland

[F7]17 . . . . . .

Textual Amendments

F7 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)**

PART III

SMOKE CONTROL AREAS

Modifications etc. (not altering text)

C12 Pt. III functions etc. assigned to the port health authority and modified (E.) (31.3.2017) by The Weymouth Port Health Authority Order 2017 (S.I. 2017/558), arts. 1(1), 9, **Sch. 2** (with art. 9(3))

Creation of smoke control areas

18 Declaration of smoke control area by local authority.

(1) A local authority may by order declare the whole or any part of the district of the authority to be a smoke control area; and any order made under this section is referred to in this Act as a "smoke control order".

(2) A smoke control order—

(a) may make different provision for different parts of the smoke control area;

(b) may limit the operation of section 20 (prohibition of emissions of smoke) to specified classes of building in the area; and

(c) may exempt specified buildings or classes of building or specified fireplaces or classes of fireplace in the area from the operation of that section, upon such conditions as may be specified in the order;

and the reference in paragraph (c) to specified buildings or classes of building include a reference to any specified, or to any specified classes of, fixed boiler or industrial plant.

(3) A smoke control order may be revoked or varied by a subsequent order.

(4) The provisions of Schedule 1 apply to the coming into operation of smoke control orders.

19 Power of Secretary of State to require creation of smoke control areas. E+W

(1) If, after consultation with a local authority, the Secretary of State is satisfied—

(a) that it is expedient to abate the pollution of the air by smoke in the district or part of the district of the authority; and

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(b) that the authority have not exercised, or have not sufficiently exercised, their powers under section 18 (power to declare smoke control area) to abate the pollution,

he may direct the authority to prepare and submit to him for his approval, within such period not being less than six months from the direction as may be specified in the direction, proposals for making and bringing into operation one or more smoke control orders within such period or periods as the authority think fit.

(2) Any proposals submitted by a local authority in pursuance of a direction under subsection (1) may be varied by further proposals submitted by the authority within the period specified for the making of the original proposals or such longer period as the Secretary of State may allow.

(3) The Secretary of State may reject any proposals submitted to him under this section or may approve them in whole or in part, with or without modifications.

(4) Where a local authority to whom a direction under subsection (1) has been given—

(a) fail to submit proposals to the Secretary of State within the period specified in the direction; or

(b) submit proposals which are rejected in whole or in part,

the Secretary of State may make an order declaring them to be in default and directing them for the purposes of removing the default to exercise their powers under section 18 in such manner and within such period as may be specified in the order.

(5) An order made under subsection (4) may be varied or revoked by a subsequent order so made.

(6) While proposals submitted by a local authority and approved by the Secretary of State under this section are in force, it shall be the duty of the authority to make such order or orders under section 18 as are necessary to carry out the proposals.

Extent Information

E1 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only.

19 Power of Secretary of State to require creation of smoke control areas. S

(1) If, after consultation with a local authority, the **[**[F100]Scottish Environment Protection Agency (in this section referred to as "the Agency")**]** is satisfied—

(a) that it is expedient to abate the pollution of the air by smoke in the district or part of the district of the authority; and

(b) that the authority have not exercised, or have not sufficiently exercised, their powers under section 18 (power to declare smoke control area) to abate the pollution,

[[F101]the Agency**]** may direct the authority to prepare and submit to **[**[F101]it**]** for **[**[F101]its**]** approval, within such period not being less than six months from the direction as may be specified in the direction, proposals for making and bringing into operation one or more smoke control orders within such period or periods as the authority think fit.

(2) Any proposals submitted by a local authority in pursuance of a direction under subsection (1) may be varied by further proposals submitted by the authority within

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the period specified for the making of the original proposals or such longer period as the **[**[F102]Agency**]** may allow.

(3) The **[**[F102]Agency**]** may reject any proposals submitted to **[**[F103]it**]** under this section or may approve them in whole or in part, with or without modifications.

(4) Where a local authority to whom a direction under subsection (1) has been given—

(a) fail to submit proposals to the **[**[F102]Agency**]** within the period specified in the direction; or

(b) submit proposals which are rejected in whole or in part,

[[F104]the Agency, with the consent of**]** the Secretary of State may make an order declaring them to be in default and directing them for the purposes of removing the default to exercise their powers under section 18 in such manner and within such period as may be specified in the order.

(5) An order made under subsection (4) may be varied or revoked by a subsequent order so made.

(6) While proposals submitted by a local authority and approved by the **[**[F102]Agency**]** under this section are in force, it shall be the duty of the authority to make such order or orders under section 18 as are necessary to carry out the proposals.

Extent Information

E6 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only.

Textual Amendments

F100 Words in s. 19(1) substituted (S.) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 196(2)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F101 Words in s. 19(1) substituted (S.) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 196(2)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F102 Words in s. 19(2)(3)(4)(a)(6) substituted (S.) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 196(3)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F103 Word in s. 19(3) substituted (S.) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 196(4)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F104 Words in s. 19(4) inserted (S.) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 196(5)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C23 S. 19: Certain functions of the Secretary of State transferred to SEPA (12.10.1995) by 1995 c. 25, **s. 21(1)(i)(2)(c)** (with ss. 7(6), 115, 117); S.I.1995/2649, **art. 2(b)**

C24 S. 19 modified (1.4.1996) by 1995 c. 25, **s. 33(5)(f)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Prohibition on emission of smoke in smoke control area

20 Prohibition on emission of smoke in smoke control area.

(1) If, on any day, smoke is emitted from a chimney of any building within a smoke control area, the occupier of the building shall be guilty of an offence.

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(2) If, on any day, smoke is emitted from a chimney (not being a chimney of a building) which serves the furnace of any fixed boiler or industrial plant within a smoke control area, the person having possession of the boiler or plant shall be guilty of an offence.

(3) Subsections (1) and (2) have effect—

(a) subject to any exemptions for the time being in force under section 18, 21 or 22;

(b) subject to section 51 (duty to notify offences to occupier or other person liable).

(4) In proceedings for an offence under this section it shall be a defence to prove that the alleged emission was not caused by the use of any fuel other than an authorised fuel.

(5) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

[[F8](5ZA) In the application of this Part to England, "authorised fuel" means a fuel included in a list of authorised fuels kept by the Secretary of State for the purposes of this Part.

(5ZB) The Secretary of State must—

(a) publish the list of authorised fuels, and

(b) publish a revised copy of the list as soon as is reasonably practicable after any change is made to it.

(5ZC) The list must be published in such manner as the Secretary of State considers appropriate.**]**

[[F9](5A) In this Part, "authorised fuel" means a fuel included in a list of authorised fuels kept by the Scottish Ministers for the purposes of this Part.

(5B) The Scottish Ministers must—

(a) publish the list of authorised fuels; and

(b) publish a revised copy of the list as soon as is reasonably practicable after any change is made to it.

(5C) The list must be published in such manner as the Scottish Ministers consider appropriate.**]**

(6) **[**[F10]Except as provided by subsection (5ZA), in**][**[F11]Except as provided in subsection (5A), in**]** this Part "authorised fuel" means a fuel declared by regulations of the Secretary of State to be an authorised fuel for the purposes of this Part.

Textual Amendments

F8 S. 20(5ZA)-(5ZC) inserted (E.W.) (1.10.2015) by Deregulation Act 2015 (c. 20), **ss. 15(2)**, 115(7); S.I. 2015/1732, art. 2(b)

F9 S. 20(5A)-(5C) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), **ss. 50(2)(a)**, 61(2); S.S.I. 2014/160, art. 2(1)(2), sch.

F10 Words in s. 20(6) substituted (E.W.) (1.10.2015) by Deregulation Act 2015 (c. 20), **ss. 15(3)**, 115(7); S.I. 2015/1732, art. 2(b)

F11 Words in s. 20(6) substituted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), **ss. 50(2)(b)**, 61(2); S.S.I. 2014/160, art. 2(1)(2), sch.

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Modifications etc. (not altering text)

C13 Power to exclude conferred (27.8.1993) by 1993 c. 11, **s. 45(1)(a)**

C14 S. 20 excluded (9.1.1998) by S.I. 1997/3009, art. 2, **Sch. 1**
S. 20 excluded (S.) (8.10.1999) by S.S.I. 1999/58, **art. 2**
S. 20 excluded (28.6.1999) by S.I. 1999/1515, **art. 2**
S. 20 excluded (S.) (16.2.2001) by S.S.I. 2001/16, **art. 2**

C15 S. 20 restricted (W.) (3.4.2013) by The Smoke Control Areas (Exempted Fireplaces) (Wales) Order 2013 (S.I. 2013/561), arts. 1(1), **2**

C16 S. 20 excluded (7.4.2017) by The Smoke Control Areas (Exempted Classes of Fireplace) (Wales) Order 2017 (S.I. 2017/423), arts. 1(1), 2, **Sch.**

21 Power [F12]... to exempt certain fireplaces.

[[F13](A1) For the purposes of the application of this Part to England, the Secretary of State may exempt any class of fireplace from the provisions of section 20 (prohibition of smoke emissions in smoke control area) if he is satisfied that such fireplaces can be used for burning fuel other than authorised fuels without producing any smoke or a substantial quantity of smoke.

(A2) An exemption under subsection (A1) may be made subject to such conditions as the Secretary of State considers appropriate.

(A3) The Secretary of State must—

(a) publish a list of those classes of fireplace that are exempt under subsection (A1) including details of any conditions to which an exemption is subject;

(b) publish a revised copy of the list as soon as is reasonably practicable after any change is made to the classes of fireplace that are so exempt or to the conditions to which an exemption is subject.

(A4) The list must be published in such manner as the Secretary of State considers appropriate.**]**

[[F14](1) For the purposes of this Part, the Scottish Ministers may exempt any class or description of fireplace from the provisions of section 20 (prohibition of smoke emissions in smoke control areas) if they are satisfied that such fireplaces can be used for burning fuel other than authorised fuels without producing any smoke or a substantial quantity of smoke.

(2) An exemption under subsection (1) may be made subject to such conditions as the Scottish Ministers consider appropriate.

(3) The Scottish Ministers must—

(a) publish a list of those classes or descriptions of fireplace that are exempt under subsection (1), including details of any conditions to which an exemption is subject; and

(b) publish a revised copy of the list as soon as is reasonably practicable after any change is made to the classes or descriptions of fireplace that are so exempt or to the conditions to which an exemption is subject.

(4) The list must be published in such manner as the Scottish Ministers consider appropriate.**]**

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[[F15](5)**]** **[**[F16]Except where subsection (1) applies, the**][**[F17]Except where subsection (A1) applies, the**]** Secretary of State may by order exempt any class of fireplace, upon such conditions as may be specified in the order, from the provisions of section 20 (prohibition of smoke emissions in smoke control area), if he is satisfied that such fireplaces can be used for burning fuel other than authorised fuels without producing any smoke or a substantial quantity of smoke.

Textual Amendments

F12 Words in s. 21 title repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), ss. 50(4), 61(2); S.S.I. 2014/160, art. 2(1)(2), sch.
Words in s. 21 title omitted (E.W.) (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), **ss. 15(6)**, 115(7); S.I. 2015/1732, art. 2(b)

F13 S. 21(A1)-(A4) inserted (E.W.) (1.10.2015) by Deregulation Act 2015 (c. 20), **ss. 15(4)**, 115(7); S.I. 2015/1732, art. 2(b)

F14 S. 21(1)-(4) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), **ss. 50(3)(b)**, 61(2); S.S.I. 2014/160, art. 2(1)(2), sch.

F15 S. 21(5): s. 21 renumbered as s. 21(5) (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), ss. 50(3)(a), 61(2); S.S.I. 2014/160, art. 2(1)(2), sch.
S. 21(5): s. 21 renumbered as s. 21(5) (E.W.) (1.10.2015) by Deregulation Act 2015 (c. 20), **ss. 15(5)**, 115(7); S.I. 2015/1732, art. 2(b)

F16 Words in s. 21(5) substituted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), ss. 50(3)(a), 61(2); S.S.I. 2014/160, art. 2(1)(2), sch.

F17 Words in s. 21(5) substituted (E.W.) (1.10.2015) by Deregulation Act 2015 (c. 20), **ss. 15(5)**, 115(7); S.I. 2015/1732, art. 2(b)

22 Exemptions relating to particular areas.

(1) The Secretary of State may, if it appears to him to be necessary or expedient so to do, by order suspend or relax the operation of section 20 (prohibition of smoke emissions in smoke control area) in relation to the whole or any part of a smoke control area.

(2) Before making an order under subsection (1) the Secretary of State shall consult with the local authority unless he is satisfied that, on account of urgency, such consultation is impracticable.

(3) As soon as practicable after the making of such an order the local authority shall take such steps as appear to them suitable for bringing the effect of the order to the notice of persons affected.

Dealings with unauthorised fuel

23 Acquisition and sale of unauthorised fuel in a smoke control area.

(1) Any person who—

(a) acquires any solid fuel for use in a building in a smoke control area otherwise than in a building or fireplace exempted from the operation of section 20 (prohibition of smoke emissions in smoke control area);

(b) acquires any solid fuel for use in any fixed boiler or industrial plant in a smoke control area, not being a boiler or plant so exempted; or

(c) sells by retail any solid fuel for delivery by him or on his behalf to—

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(i) a building in a smoke control area; or

(ii) premises in such an area in which there is any fixed boiler or industrial plant,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) In subsection (1), "solid fuel" means any solid fuel other than an authorised fuel.

(3) Subsection (1) shall, in its application to a smoke control area in which the operation of section 20 is limited by a smoke control order to specified classes of buildings, boilers or plant, have effect as if references to a building, boiler or plant were references to a building, boiler or plant of a class specified in the order.

(4) The power of the Secretary of State under section 22 (exemptions relating to particular areas) to suspend or relax the operation of section 20 in relation to the whole or any part of a smoke control area includes power to suspend or relax the operation of subsection (1) in relation to the whole or any part of such an area.

(5) In proceedings for an offence under this section consisting of the sale of fuel for delivery to a building or premises, it shall be a defence for the person accused to prove that he believed and had reasonable grounds for believing—

(a) that the building was exempted from the operation of section 20 or, in a case where the operation of that section is limited to specified classes of building, was not of a specified class; or

(b) that the fuel was acquired for use in a fireplace, boiler or plant so exempted or, in a case where the operation of that section is limited to specified classes of boilers or plant, in a boiler or plant not of a specified class.

Adaptation of fireplaces

24 Power of local authority to require adaptation of fireplaces in private dwellings.

(1) The local authority may, by notice in writing served on the occupier or owner of a private dwelling which is, or when a smoke control order comes into operation will be, within a smoke control area, require the carrying out of adaptations in or in connection with the dwelling to avoid contraventions of section 20 (prohibition of smoke emissions in smoke control area).

(2) The provisions of Part XII of the [M3]Public Health Act 1936 with respect to appeals against, and the enforcement of, notices requiring the execution of works shall apply in relation to any notice under subsection (1).

(3) Any reference in those provisions to the expenses reasonably incurred in executing the works shall, in relation to a notice under subsection (1), be read as a reference to three-tenths of those expenses or such smaller fraction of those expenses as the local authority may in any particular case determine.

(4) In the application of this section to Scotland—

(a) subsections (2) and (3) shall be omitted;

(b) section 111 of the [M4]Housing (Scotland) Act 1987 (which provides for an appeal to the sheriff against certain notices, demands and orders under that Act) shall apply in relation to a notice under subsection (1) of this section as it applies in relation to a repair notice under that Act; and

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(c) subject to any such right of appeal as is mentioned in paragraph (b), if any person on whom a notice under subsection (1) is served fails to execute the works required by the notice within the time limited by the notice, the local authority may themselves execute the works and may recover from that person three-tenths, or such smaller fraction as the local authority may in any particular case determine, of the expenses reasonably incurred by them in so doing.

Marginal Citations

M3 1936 c. 49.

M4 1987 c. 26.

25 Expenditure incurred in relation to adaptations in private dwellings.

(1) Schedule 2 to this Act shall have effect with respect to certain expenditure incurred in adapting old private dwellings in smoke control areas.

(2) In this Part "old private dwelling" means any private dwelling other than one which either—

(a) was erected after 15th August 1964 (which was the date immediately preceding the time when the enactment replaced by this subsection came into force), or

(b) was produced by the conversion, after that date, of other premises, with or without the addition of premises erected after that date;

and for the purposes of this subsection a dwelling or premises shall not be treated as erected or converted after that date unless the erection or conversion was begun after it.

26 Power of local authority to make grants towards adaptations to fireplaces in churches, chapels, buildings used by charities etc.

(1) If, after the making of a smoke control order, the owner or occupier of any premises or part of any premises to which this section applies and which will be within a smoke control area as the result of the order incurs expenditure on adaptations in or in connection with the premises or part to avoid contraventions of section 20 (prohibition of smoke emissions in smoke control area), the local authority may, if they think fit, repay to him the whole or any part of that expenditure.

(2) This section applies to any premises or part of any premises which fall within one or more of the following paragraphs, that is to say—

(a) any place of public religious worship, being, in the case of a place in England or Wales, a place which belongs to the Church of England or to the Church in Wales (within the meaning of the [M5]Welsh Church Act 1914) or which is for the time being certified as required by law as a place of religious worship;

(b) any church hall, chapel hall or similar premises used in connection with any such place of public religious worship, and so used for the purposes of the organisation responsible for the conduct of public religious worship in that place;

(c) any premises or part of any premises occupied for the purposes of an organisation (whether corporate or unincorporated) which is not established

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or conducted for profit and whose main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare.

Marginal Citations
M5 1914 c. 91.

Supplementary provisions

27 References to adaptations for avoiding contraventions of section 20.

(1) References in this Part to adaptations in or in connection with a dwelling to avoid contraventions of section 20 (prohibition of smoke emissions from smoke control area) shall be read as references to the execution of any of the following works (whether in or outside the dwelling), that is to say—
  (a) adapting or converting any fireplace;
  (b) replacing any fireplace by another fireplace or by some other means of heating or cooking;
  (c) altering any chimney which serves any fireplace;
  (d) providing gas ignition, electric ignition or any other special means of ignition; or
  (e) carrying out any operation incidental to any of the operations mentioned in paragraphs (a) to (d);

being works which are reasonably necessary in order to make what is in all the circumstances suitable provision for heating and cooking without contraventions of section 20.

(2) For the purposes of this section the provision of any igniting apparatus or appliance (whether fixed or not) operating by means of gas, electricity or other special means shall be treated as the execution of works.

(3) Except for the purposes of section 24 (power of local authority to require certain adaptations), works which make such suitable provision as is mentioned in subsection (1) shall not be treated as not being adaptations to avoid contraventions of section 20 of this Act by reason that they go beyond what is reasonably necessary for that purpose, but any expenditure incurred in executing them in excess of the expenditure which would have been reasonably incurred in doing what was reasonably necessary shall be left out of account.

(4) References in this section to a dwelling include references to any premises or part of any premises to which section 26 (grants towards certain adaptations in churches and other buildings) applies.

28 Cases where expenditure is taken to be incurred on execution of works.

(1) References in this Part to expenses incurred in the execution of works include references to the cost of any fixed cooking or heating appliance installed by means of the execution of the works, notwithstanding that the appliance can be readily removed from the dwelling without injury to itself or the fabric of the dwelling.

(2) For the purposes of this Part a person who enters into either—

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(a) a conditional sale agreement for the sale to him, or

(b) a hire-purchase agreement for the bailment or (in Scotland) hiring to him,

of a cooking or heating appliance shall be treated as having incurred on the date of the agreement expenditure of an amount equal to the price which would have been payable for the appliance if he had purchased it for cash on that date.

(3) References in this section to a dwelling include references to any premises or part of any premises to which section 26 (grants towards certain adaptations in churches and other buildings) applies.

29 Interpretation of Part III.

In this Part, except so far as the context otherwise requires—

"authorised fuel" has the meaning given in section **[**[F18]20**]**;

"conditional sale agreement" means an agreement for the sale of goods under which—

(a) the purchase price or part of it is payable by instalments; and

(a) the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled;

"heating", in relation to a dwelling, includes the heating of water;

"hire-purchase agreement" means an agreement, other than a conditional sale agreement, under which—

(a) goods are bailed or (in Scotland) hired in return for periodical payments by the person to whom they are bailed or hired; and

(b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs—

(i) the exercise of an option to purchase by that person;

(ii) the doing of any other specified act by any party to the agreement; and

(iii) the happening of any other specified event;

"old private dwelling" has the meaning given in section 25; and

"smoke control order" means an order made by a local authority under section 18.

Textual Amendments

F18 Word in s. 29 substituted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), **ss. 50(5)**, 61(2); S.S.I. 2014/160, art. 2(1)(2), sch.
Word in s. 29 substituted (E.W.) (1.10.2015) by Deregulation Act 2015 (c. 20), **ss. 15(7)**, 115(7); S.I. 2015/1732, art. 2(b)

Status: *Point in time view as at 01/04/2018. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Clean Air Act 1993 is up to date with all changes known to be in force on or before 09 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART IV

CONTROL OF CERTAIN FORMS OF AIR POLLUTION

30 Regulations about motor fuel.

(1) For the purpose of limiting or reducing air pollution, the Secretary of State may by regulations—

(a) impose requirements as to the composition and contents of any fuel of a kind used in motor vehicles; and

(b) where such requirements are in force, prevent or restrict the production, treatment, distribution, import, sale or use of any fuel which in any respect fails to comply with the requirements, and which is for use in the United Kingdom.

(2) It shall be the duty of the Secretary of State, before he makes any regulations under this section, to consult—

(a) such persons appearing to him to represent manufacturers and users of motor vehicles;

(b) such persons appearing to him to represent the producers and users of fuel for motor vehicles; and

(c) such persons appearing to him to be conversant with problems of air pollution,

as he considers appropriate.

(3) Regulations under this section—

(a) in imposing requirements as to the composition and contents of any fuel, may apply standards, specifications, descriptions or tests laid down in documents not forming part of the regulations; and

(b) where fuel is subject to such requirements, may, in order that persons to whom the fuel is supplied are afforded information as to its composition or contents, impose requirements for securing that the information is displayed at such places and in such manner as may be prescribed by the regulations.

(4) It shall be duty of every local weights and measures authority to enforce the provisions of regulations under this section within its area; and **[**[F19]subsection**]** (2) [F20]. . .of section 26 of the [M6]Trade Descriptions Act 1968 (reports and inquiries) shall apply as respects those authorities' functions under this subsection as **[**[F19]it applies**]** to their functions under that Act.

[F21](5) . . . . . .

[[F22](5A) For the investigatory powers available to a local weights and measures authority for the purposes of the duty in subsection (4), see Schedule 5 to the Consumer Rights Act 2015.**]**

(6) In relation to Scotland—

(a) nothing in subsection (4) authorises a local weights and measures authority to institute proceedings for an offence; and

(b) regulations under this section may provide that certificates issued by such persons as may be specified by the regulations in relation to such matters as may be so specified shall, subject to the provisions of the regulations, be received in evidence, and be sufficient evidence, of those matters in any proceedings for an offence under regulations made under this section;

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and such regulations may apply any of the provisions of subsections (2) to (4) of section 31 of the [M7]Trade Descriptions Act 1968 (evidence by certificate).

(7) In Northern Ireland it shall be the duty of the Department of Economic Development to enforce the provisions of regulations under this section; and accordingly this section shall have effect in relation to Northern Ireland with the omission of subsection (4).

[F23](8) . . . . . .

[[F24](8A) For the investigatory powers available to the Department of Enterprise, Trade and Investment in Northern Ireland for the purposes of the duty in subsection (7), see Schedule 5 to the Consumer Rights Act 2015.**]**

(9) The Secretary of State shall for each financial year pay into the Consolidated Fund of Northern Ireland such sum as the Secretary of State and the Department of Economic Development for Northern Ireland may agree to be appropriate as representing the expenses incurred by that Department in enforcing the provisions of any regulations made under this section.

Textual Amendments

F19 Words in s. 30(4) substituted (19.11.1998) by 1998 c. 43, s. 1(2), **Sch. 2 para. 13**

F20 Words in s. 30(4) repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt. X** Group 5

F21 S. 30(5) omitted (1.10.2015) by virtue of Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 6 para. 52(2)**; S.I. 2015/1630, art. 3(i) (with art. 8)

F22 S. 30(5A) inserted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 6 para. 52(3)**; S.I. 2015/1630, art. 3(i)

F23 S. 30(8) omitted (1.10.2015) by virtue of Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 6 para. 52(4)**; S.I. 2015/1630, art. 3(i) (with art. 8)

F24 S. 30(8A) inserted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 6 para. 52(5)**; S.I. 2015/1630, art. 3(i)

Marginal Citations

M6 1968 c. 29.

M7 1968 c. 29.

31 Regulations about sulphur content of oil fuel for furnaces or engines. E+W

(1) For the purpose of limiting or reducing air pollution, the Secretary of State may by regulations impose limits on the sulphur content of oil fuel which is used in furnaces or engines.

(2) It shall be the duty of the Secretary of State, before he makes any regulations in pursuance of this section, to consult—

(a) such persons appearing to him to represent producers and users of oil fuel;

(b) such persons appearing to him to represent manufacturers and users of plant and equipment for which oil fuel is used; and

(c) such persons appearing to him to be conversant with problems of air pollution,

as he considers appropriate.

(3) Regulations under this section may—

(a) prescribe the kinds of oil fuel, and the kinds of furnaces and engines, to which the regulations are to apply;

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(b) apply standards, specifications, descriptions or tests laid down in documents not forming part of the regulations; and

(c) without prejudice to the generality of section 63(1)(a), make different provision for different areas.

(4) It shall be the duty—

(a) of every local authority to enforce the provisions of regulations under this section within its area, except in relation to a furnace which is

[[F25](i)**]** part of a process subject to Part I of the [M8]Environmental Protection Act 1990 **[**[F25], or

(ii) part of an installation subject to regulation by the **[**[F26]appropriate agency**]** under regulations made under section 2 of the Pollution Prevention and Control Act 1999**]**; and

(b) of the inspectors appointed under that Part to enforce those provisions in relation to **[**[F27]furnaces within sub-paragraph (i) of paragraph (a) above and of the **[**[F28]appropriate agency**]** to enforce those provisions in relation to furnaces within sub-paragraph (ii) of that paragraph**]**;

but nothing in this section shall be taken to authorise a local authority in Scotland to institute proceedings for any offence.

[[F29](4A) For the investigatory powers available to a local authority for the purposes of the duty in subsection (4)(a), see Schedule 5 to the Consumer Rights Act 2015.**]**

(5) In this section "oil fuel" means any liquid petroleum product produced in a refinery.

[[F30](6) In this section, "appropriate agency" means—

(a) in relation to England, the Environment Agency;

(b) in relation to Wales, the Natural Resources Body for Wales.**]**

Extent Information

E2 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F25 Words in s. 31(4)(a) renumbered as s. 31(4)(a)(i) and s. 31(4)(a)(ii) and word inserted (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 para. 11(a)**

F26 Words in s. 31(4)(a)(ii) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 343(2)** (with Sch. 7)

F27 Words in s. 31(4)(b) substituted (1.8.2000) by S.I 2000/1973, reg. 39, Sch. 10 para. 11(b)

F28 Words in s. 31(4)(b) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 343(2)** (with Sch. 7)

F29 S. 31(4A) inserted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 6 para. 53**; S.I. 2015/1630, art. 3(i)

F30 S. 31(6) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 343(3)** (with Sch. 7)

Marginal Citations

M8 1990 c. 43.

Status: *Point in time view as at 01/04/2018. This version of this Act contains provisions that are prospective.*
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31 Regulations about sulphur content of oil fuel for furnaces or engines. S

(1) For the purpose of limiting or reducing air pollution, the Secretary of State may by regulations impose limits on the sulphur content of oil fuel which is used in furnaces or engines.

(2) It shall be the duty of the Secretary of State, before he makes any regulations in pursuance of this section, to consult—

(a) such persons appearing to him to represent producers and users of oil fuel;

(b) such persons appearing to him to represent manufacturers and users of plant and equipment for which oil fuel is used; and

(c) such persons appearing to him to be conversant with problems of air pollution,

as he considers appropriate.

(3) Regulations under this section may—

(a) prescribe the kinds of oil fuel, and the kinds of furnaces and engines, to which the regulations are to apply;

(b) apply standards, specifications, descriptions or tests laid down in documents not forming part of the regulations; and

(c) without prejudice to the generality of section 63(1)(a), make different provision for different areas.

(4) It shall be the duty—

(a) of every local authority to enforce the provisions of regulations under this section within its area, except in relation to a furnace which is

[[F105](i)**]** part of a process subject to Part I of the [M33]Environmental Protection Act 1990 [F106]**[**[F105]...

(ii) part of an installation subject to regulation by the Scottish Environment Protection Agency under regulations made under the Pollution Prevention and Control Act 1999**][**[F107]; or

(iii) part of an activity subject to regulation by the Scottish Environment Protection Agency under regulations under section 18 of the Regulatory Reform (Scotland) Act 2014;**]** and

(b) of the inspectors appointed under that Part to enforce those provisions in relation to **[**[F108]furnaces within sub-paragraph (i) of paragraph (a) above and of the Scottish Environment Protection Agency to enforce those provisions in relation to furnaces within sub-paragraph (ii) **[**[F109]or (iii)**]** of that paragraph**]**;

but nothing in this section shall be taken to authorise a local authority in Scotland to institute proceedings for any offence.

[[F29](4A) For the investigatory powers available to a local authority for the purposes of the duty in subsection (4)(a), see Schedule 5 to the Consumer Rights Act 2015.**]**

(5) In this section "oil fuel" means any liquid petroleum product produced in a refinery.

Extent Information

E7 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Status: *Point in time view as at 01/04/2018. This version of this Act contains provisions that are prospective.*
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Textual Amendments

F29 S. 31(4A) inserted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 6 para. 53**; S.I. 2015/1630, art. 3(i)

F105 Words in s. 31(4)(a) renumbered as s. 31(4)(a)(i) and s. 31(4)(a)(ii) and word inserted (S.) (28.9.2000) by S.S.I. 2000/323, reg. 36, **Sch. 10 para. 4(2)(a)**

F106 Word in s. 31(4)(a) repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 4(2)(a)(i)**; S.S.I. 2014/160, art. 2(1)(2), sch.

F107 S. 31(4)(a)(iii) and word inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 4(2)(a)(ii)**; S.S.I. 2014/160, art. 2(1)(2), sch.

F108 Words in s. 31(4)(b) substituted (S.) (28.9.2000) by S.S.I. 2000/323, **reg. 36**, SCh. 10 para. 4(2)(b)

F109 Words in s. 31(4)(b) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 4(2)(b)**; S.S.I. 2014/160, art. 2(1)(2), sch.

Marginal Citations

M33 1990 c. 43.

32 Provisions supplementary to sections 30 and 31.

(1) Regulations under section 30 or 31 (regulation of content of motor fuel and fuel oil) may authorise the Secretary of State to confer exemptions from any provision of the regulations.

(2) A person who contravenes or fails to comply with any provision of regulations under section 30 or 31 shall be guilty of an offence and liable—

(a) on conviction on indictment, to a fine; and

(b) on summary conviction, to a fine not exceeding the statutory maximum;

but the regulations may in any case exclude liability to conviction on indictment or reduce the maximum fine on summary conviction.

(3) Regulations under section 30 or 31 shall, subject to any provision to the contrary in the regulations, apply to fuel used for, and to persons in, the public service of the Crown as they apply to fuel used for other purposes and to other persons.

(4) A local authority shall not be entitled by virtue of subsection (3) to exercise, in relation to fuel used for and persons in that service, any power conferred on the authority by virtue of **[**[F31]Schedule 5 to the Consumer Rights Act 2015 (investigatory powers)**]** .

Textual Amendments

F31 Words in s. 32(4) substituted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 6 para. 54**; S.I. 2015/1630, art. 3(i)

33 Cable burning.

(1) A person who burns insulation from a cable with a view to recovering metal from the cable shall be guilty of an offence unless the burning is part of [F32]...an activity subject to regulations under section 2 of the Pollution Prevention and Control Act 1999 **[**[F33]or section 18 of the Regulatory Reform (Scotland) Act 2014**]**

(2) 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.

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Textual Amendments

F32 Words in s. 33(1) repealed (1.4.2015 for S.) by Pollution Prevention and Control Act 1999 (c. 24), s. 7(3), **Sch. 3**; S.S.I. 2015/74, art. 2(2)(d)

F33 Words in s. 33(1) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 4(3)**; S.S.I. 2014/160, art. 2(1)(2), sch.

PART V

INFORMATION ABOUT AIR POLLUTION

34 Research and publicity.

(1) A local authority may—

(a) undertake, or contribute towards the cost of, investigation and research relevant to the problem of air pollution;

(b) arrange for the publication of information on that problem;

(c) arrange for the delivery of lectures and addresses, and the holding of discussions, on that problem;

(d) arrange for the display of pictures, cinematograph films or models, or the holding of exhibitions, relating to that problem; and

(e) prepare, or join in or contribute to the cost of the preparation of, pictures, films, models or exhibitions to be displayed or held as mentioned in paragraph (d).

(2) In acting under subsection (1)(b), a local authority shall ensure that the material published is presented in such a way that no information relating to a trade secret is disclosed, except with the consent in writing of a person authorised to disclose it.

(3) Breach of a duty imposed by subsection (2) shall be actionable.

(4) In any civil or criminal proceedings (whether or not arising under this Act) brought against a local authority, or any member or officer of a local authority, on the grounds that any information has been published, it shall be a defence to show that it was published in compliance with subsections (1) and (2).

35 Obtaining information.

(1) Without prejudice to the generality of section 34 (research, etc. by local authorities), local authorities may obtain information about the emission of pollutants and other substances into the air—

(a) by issuing notices under section 36 (information about emissions from premises);

(b) by measuring and recording the emissions, and for that purpose entering on any premises, whether by agreement or in exercise of the power conferred by section 56 (rights of entry and inspection); and

(c) by entering into arrangements with occupiers of premises under which they measure and record emissions on behalf of the local authority;

but references to premises in paragraphs (b) and (c) do not include private dwellings or caravans.

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(2) A local authority shall not be entitled to exercise the power of entry mentioned in subsection (1)(b) for the purpose of measuring and recording such emissions on any premises unless—

(a) the authority has given to the occupier of the premises a notice in writing—

(i) specifying the kind of emissions in question and the steps it proposes to take on the premises for the purpose of measuring and recording emissions of that kind; and

(ii) stating that it proposes to exercise that power for that purpose unless the occupier requests the authority to serve on him a notice under section 36 (information about emissions from premises) with respect to the emissions; and

(b) the period of twenty-one days beginning with the day on which the notice was given has expired;

and the authority shall not be entitled to exercise that power if, during that period, the occupier gives a notice to the authority requesting it to serve on him a notice under section 36.

(3) Nothing in this section shall authorise a local authority to investigate emissions from any **[**[F34]process subject to Part I of the Environmental Protection Act 1990 **[**[F35]or **]** activity subject to regulations under section 2 of the Pollution Prevention and Control Act 1999**][**[F36]or section 18 of the Regulatory Reform (Scotland) Act 2014**]** otherwise than—

(a) by issuing notices under section 36; or

(b) by exercising the powers conferred on the authority by section 34(1)(a) (investigation and research etc.) without entering the premises concerned.

(4) So long as a local authority exercises any of its powers under subsection (1), it shall from time to time consult the persons mentioned in subsection (5)—

(a) about the way in which the local authority exercises those powers (under this section and section 36); and

(b) about the extent to which, and the manner in which, any information collected under those powers should be made available to the public.

(5) The consultations required by subsection (4) shall be with—

(a) such persons carrying on any trade or business in the authority's area or such organisations appearing to the authority to be representative of those persons; and

(b) such persons appearing to the authority to be conversant with problems of air pollution or to have an interest in local amenity,

as appear to the authority to be appropriate.

(6) The consultations shall take place as the authority think necessary, but not less than twice in each financial year.

Textual Amendments

F34 Words in s. 35(3) repealed (1.4.2015 for S.) by Pollution Prevention and Control Act 1999 (c. 24), s. 7(3), **Sch. 3**; S.S.I. 2015/74, art. 2(2)(d)

F35 Words in s. 35(3) inserted (21.3.2000 (E.W.) and 29.9.2000 (S.)) by 1999 c. 24, s. 6, **Sch. 2 para. 11**; S.I. 2000/800, **art. 2**; S.S.I. 2000/322, **art. 2**

Status: *Point in time view as at 01/04/2018. This version of this Act contains provisions that are prospective.*
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F36 Words in s. 35(3) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 4(4)**; S.S.I. 2014/160, art. 2(1)(2), sch.

36 Notices requiring information about air pollution.

(1) A local authority may by notice in writing require the occupier of any premises in its area to furnish, whether by periodical returns or by other means, such estimates or other information as may be specified or described in the notice concerning the emission of pollutants and other substances into the air from the premises.

(2) This section does not apply to premises in so far as they consist of a private dwelling or a caravan.

[[F37](2A) If the notice relates to an installation subject to regulations made under section 2 of the Pollution Prevention and Control Act 1999 **[**[F38]or to an activity subject to regulation by the Scottish Environment Protection Agency under regulations under section 18 of the Regulatory Reform (Scotland) Act 2014**]** , the person on whom the notice is served shall not be obliged to supply any information which, as certified by the Scottish Environment Protection Agency, is not of a kind which is being supplied to it for the purposes of those regulations.**]**

[[F39](2A) If the notice relates to an installation subject to regulation by the **[**[F40]appropriate agency**]** under regulations made under section 2 of the Pollution Prevention and Control Act 1999, the person on whom the notice is served shall not be obliged to supply any information which, as certified by the **[**[F40]appropriate agency**]** , is not of a kind which is being supplied to the **[**[F40]appropriate agency**]** for the purposes of those regulations.**]**

[[F41](3) If the notice relates to a process subject to Part I of the Environmental Protection Act 1990, the person on whom the notice is served shall not be obliged to supply any information which, as certified by an inspector appointed under that Part, is not of a kind which is being supplied to the inspector for the purposes of that Part.**]**

(4) The person on whom a notice is served under this section shall comply with the notice within six weeks of the date of service, or within such longer period as the local authority may by notice allow.

(5) A notice under this section shall not require returns at intervals of less than three months, and no one notice (whether or not requiring periodical returns) shall call for information covering a period of more than twelve months.

(6) Except so far as regulations made by the Secretary of State provide otherwise, this section applies to premises used for, and to persons in, the public service of the Crown as it applies to other premises and persons.

(7) A local authority shall not be entitled by virtue of subsection (6) to exercise, in relation to premises used for and persons in the public service of the Crown, any power conferred on the authority by virtue of sections 56 to 58 (rights of entry and other local authority powers).

(8) A person who—

(a) fails without reasonable excuse to comply with the requirements of a notice served on him in pursuance of this section; or

(b) in furnishing any estimate or other information in compliance with a notice under this section, makes any statement which he knows to be false in a

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material particular or recklessly makes any statement which is 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.

(9) Where a person is convicted of an offence under subsection (8) in respect of any premises and information of any kind, nothing in section 35(2) (limits on exercise of power of entry) shall prevent a local authority from exercising the power of entry there mentioned for the purpose of obtaining information of that kind in respect of the premises.

Textual Amendments

F37 S. 36(2A) inserted (S.) (28.9.2000) by S.I. 2000/323, reg. 36, **Sch. 10 para. 4(3)**

F38 Words in s. 36(2A) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 4(5)**; S.S.I. 2014/160, art. 2(1)(2), sch.

F39 S. 36(2A) inserted (E.W.) (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 para. 12**

F40 Words in s. 36(2A) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 344** (with Sch. 7)

F41 S. 36(3) repealed (1.4.2015 for S.) by Pollution Prevention and Control Act 1999 (c. 24), s. 7(3), **Sch. 3**; S.S.I. 2015/74, art. 2(2)(d)

Modifications etc. (not altering text)

C17 S. 36 excluded (E.) (7.1.2015) by The Clean Air (Miscellaneous Provisions) (England) Regulations 2014 (S.I. 2014/3318), regs. 2(1), 11, **Sch. 3**

37 Appeals against notices under section 36.

(1) A person served with a notice under section 36 (information about air pollution), or any other person having an interest in the premises to which the notice relates, may appeal to the Secretary of State—

(a) on the ground that the giving to the authority or the disclosure to the public of all or part of the information required by the notice would—

(i) prejudice to an unreasonable degree some private interest by disclosing information about a trade secret; or

(ii) be contrary to the public interest; or

(b) on the ground that the information required by the notice is not immediately available and cannot readily be collected or obtained by the recipient of the notice without incurring undue expenditure for the purpose.

(2) If the Secretary of State allows the appeal he may direct the local authority to withdraw or modify the notice, or to take such steps as he may specify to ensure that prejudicial information is not disclosed to the public; and it shall be the duty of the authority to comply with the direction.

(3) The Secretary of State may make regulations as to appeals under this section, including regulations about the time for bringing an appeal and the circumstances in which all or any part of the appellant's case is to be withheld from the respondent.

(4) It shall be the duty of the Secretary of State, before he makes any regulations under subsection (3), to consult—

(a) such persons appearing to him to represent local authorities;

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(b) such persons appearing to him to represent industrial interests; and

(c) such persons appearing to him to be conversant with problems of air pollution,

as he considers appropriate.

38 Regulations about local authority functions under sections 34, 35 and 36.

(1) The Secretary of State shall by regulations prescribe the manner in which, and the methods by which, local authorities are to perform their functions under sections 34(1)(a) and (b), 35 and 36 (investigation and research etc. into, and the obtaining of information about, air pollution).

(2) It shall be the duty of the Secretary of State, before he makes regulations under this section, to consult—

(a) such persons appearing to him to represent local authorities;

(b) such persons appearing to him to represent industrial interests; and

(c) such persons appearing to him to be conversant with problems of air pollution,

as he considers appropriate.

(3) Regulations under this section may in particular—

(a) prescribe the kinds of emissions to which notices under section 36 (power to require information about air pollution) may relate;

(b) prescribe the kinds of information which may be required by those notices;

(c) prescribe the manner in which any such notice is to be given, and the evidence which is to be sufficient evidence of its having been given, and of its contents and authenticity;

(d) require each local authority to maintain in a prescribed form a register containing—

(i) information obtained by the authority by virtue of section 35(1) (powers of local authorities to obtain information), other than information as to which a direction under section 37(2) (appeals against notices under section 36) provides that the information is not to be disclosed to the public; and

(ii) such information (if any) as the Secretary of State may determine, or as may be determined by or under regulations, with respect to any appeal under section 37 against a notice served by the authority which the Secretary of State did not dismiss;

(e) specify the circumstances in which local authorities may enter into arrangements with owners or occupiers of premises under which they will record and measure emissions on behalf of the local authorities; and

(f) specify the kinds of apparatus which local authorities are to have power to provide and use for measuring and recording emissions, and for other purposes.

(4) Regulations made by virtue of subsection (3)(b) may in particular require returns of—

(a) the total volume of gases, whether pollutant or not, discharged from the premises in question over any period;

(b) the concentration of pollutant in the gases discharged;

(c) the total of the pollutant discharged over any period;

(d) the height or heights at which discharges take place;

(e) the hours during which discharges take place; or

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(f) the concentration of pollutants at ground level.

(5) A register maintained by a local authority in pursuance of regulations made by virtue of subsection (3)(d) shall be open to public inspection at the principal office of the authority free of charge at all reasonable hours, and the authority shall afford members of the public reasonable facilities for obtaining from the authority, on payment of reasonable charges, copies of entries in the register.

39 Provision by local authorities of information for Secretary of State.

(1) The Secretary of State may, for the purpose of obtaining information about air pollution, direct a local authority to make such arrangements as may be specified in the direction—

(a) for the provision, installation, operation and maintenance by the local authority of apparatus for measuring and recording air pollution; and

(b) for transmitting the information so obtained to the Secretary of State;

but before giving the direction under this section the Secretary of State shall consult the local authority.

(2) Where apparatus is provided in pursuance of a direction under this section, the Secretary of State shall defray the whole of the capital expenditure incurred by the local authority in providing and installing the apparatus.

(3) It shall be the duty of the local authority to comply with any direction given under this section.

40 Interpretation of Part V.

In this Part—

[[F42](za) "appropriate agency" means—

(i) in relation to England, the Environment Agency;

(ii) in relation to Wales, the Natural Resources Body for Wales;**]**

(a) references to the emission of substances into the atmosphere are to be construed as applying to substances in a gaseous or liquid or solid state, or any combination of those states; and

(b) any reference to measurement includes a reference to the taking of samples.

Textual Amendments

F42 S. 40(za) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 345** (with Sch. 7)

PART VI

SPECIAL CASES

41 Relation to Environmental Protection Act 1990.

[[F43](1) Parts I to III shall not apply to any process which is a prescribed process as from the date which is the determination date for that process.

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(2) The "determination date" for a prescribed process is—

(a) in the case of a process for which an authorisation is granted, the date on which the enforcing authority grants it, whether in pursuance of the application or, on an appeal, of a direction to grant it, and

(b) in the case of a process for which an authorisation is refused, the date of the refusal or, on an appeal, of the affirmation of the refusal.

(3) In this section "authorisation", "enforcing authority" and "prescribed process" have the meaning given in section 1 of the Environmental Protection Act 1990 and the reference to an appeal is a reference to an appeal under section 15 of that Act.**]**

Textual Amendments

F43 S. 41 repealed (1.4.2015 for S.) by Pollution Prevention and Control Act 1999 (c. 24), s. 7(3), **Sch. 3**; S.S.I. 2015/74, art. 2(2)(d)

[F45 41A Relation to the Pollution Prevention and Control Act 1999 [F44 and Regulatory Reform (Scotland) Act 2014].

(1) Where an activity is subject to regulations under section 2 of the Pollution Prevention and Control Act 1999 (regulation of polluting activities) **[**F46 or section 18 of the Regulatory Reform (Scotland) Act 2014**]** , Parts I to III of this Act shall not apply as from the determination date for the activity in question.

(2) The "determination date", for an activity, is—

(a) in the case of an activity for which a permit **[**F47 or authorisation**]** is granted, the date on which it is granted, whether in pursuance of the application, or on an appeal, of a direction to grant it;

(b) in the case of an activity for which a permit **[**F48 or authorisation**]** is refused, the date of refusal or, on appeal, of the affirmation of the refusal;

[F49 (c) in the case of an activity that is an exempt waste operation, the date of the entry on the register maintained under **[**F50 **[**F51 paragraph 11 of Schedule 2**]** (exempt facilities: general) to the Environmental Permitting Regulations**]** of an establishment or undertaking in relation to that operation.**]**

(3) In subsection (2)**[**F52—

"exempt waste operation" has the meaning given in **[**F53 the Environmental Permitting Regulations**]**;**]**

[F54 (a)**]** "permit" means a permit under regulations under section 2 of the Pollution Prevention and Control Act 1999 and the reference to an appeal is a reference to an appeal under those regulations.

[F55; and

(b) "authorisation" means an authorisation under regulations made under section 18 of the Regulatory Reform (Scotland) Act 2014, and the reference to an appeal is to an appeal under those regulations.**]**

[In this section—

F56 (4) **[**F57 activity" includes—

(a) a waste operation**[**F58, or mining waste operation, within the meaning of the Environmental Permitting Regulations;**]**, and

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(b) a mining waste operation within the meaning of those Regulations;**]**

[[F59]"the Environmental Permitting Regulations" means **[**[F60]the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154)**]** .**]]]**

Textual Amendments

F44 Words in s. 41A title inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 4(7)**; S.S.I. 2014/160, art. 2(1)(2), sch.

F45 S. 41A inserted (E.W.) (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. para. 13**; and s. 41A inserted (S.) (28.9.2000) by S.S.I. 2000/323, reg. 36, **Sch. 10 para. 4(4)**

F46 Words in s. 41A(1) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 4(6)(a)**; S.S.I. 2014/160, art. 2(1)(2), sch.

F47 Words in s. 41A(2)(a) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 4(6)(b)(i)**; S.S.I. 2014/160, art. 2(1)(2), sch.

F48 Words in s. 41A(2)(b) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 4(6)(b)(ii)**; S.S.I. 2014/160, art. 2(1)(2), sch.

F49 S. 41A(2)(c) inserted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), **Sch. 21 para. 22(2)** (with reg. 72, Sch. 4)

F50 Words in s. 41A(2)(c) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), **Sch. 26 para. 10(2)** (with reg. 1(2), Sch. 4)

F51 Words in s. 41A(2)(c) substituted (E.W.) (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), **Sch. 29 para. 11(a)** (with regs. 1(3), 77-79, Sch. 4)

F52 Words in s. 41A(3) inserted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), **Sch. 21 para. 22(3)** (with reg. 72, Sch. 4)

F53 Words in s. 41A(3) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), **Sch. 26 para. 10(3)** (with reg. 1(2), Sch. 4)

F54 S. 41A(3)(a): words in s. 41A(3) renumbered as s. 41A(3)(a) (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 4(6)(c)(i)**; S.S.I. 2014/160, art. 2(1)(2), sch.

F55 S. 41A(3)(b) and word inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 4(6)(c)(ii)**; S.S.I. 2014/160, art. 2(1)(2), sch.

F56 S. 41A(4) inserted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), **Sch. 21 para. 22(4)** (with reg. 72, Sch. 4)

F57 Words in s. 41A(4) substituted (E.W.) (7.7.2009) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2009 (S.I. 2009/1799), reg. 1, **Sch. 2 para. 3**

F58 Words in s. 41A(4) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), **Sch. 26 para. 10(4)(a)** (with reg. 1(2), Sch. 4)

F59 Words in s. 41A(4) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), **Sch. 26 para. 10(4)(b)** (with reg. 1(2), Sch. 4)

F60 Words in s. 41A(4) substituted (E.W.) (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), **Sch. 29 para. 11(b)** (with regs. 1(3), 77-79, Sch. 4)

42 Colliery spoilbanks.

(1) This section applies to any mine or quarry from which coal or shale has been, is being or is to be got.

(2) The owner of a mine **[**[F61]or quarry**][**[F61] , or the operator of a quarry,**]** to which this section applies shall employ all practicable means—

(a) for preventing combustion of refuse deposited from the mine or quarry; and

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(b) for preventing or minimising the emission of smoke and fumes from such refuse;

and, if he fails to do so, he shall be guilty of an offence.

(3) A person guilty of an offence under subsection (2) shall be 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) Neither the provisions of Part III of the Environmental Protection Act 1990 nor any provision of Parts I to III of this Act shall apply in relation to smoke, grit or dust from the combustion of refuse deposited from any mine or quarry to which this section applies.

[F62](5) . . . . . .

(6) In this section, "mine", **[**[F63]"quarry" and "owner" have the same meaning as in the [M9]Mines and Quarries Act 1954.**][**[F63]is to be construed in accordance with section 180 of the Mines and Quarries Act 1954

"operator", in relation to a quarry, has the meaning given by regulation 2(1) of the Quarries Regulations 1999 (S.I. 1999/2024);

"owner", in relation to a mine, is to be construed in accordance with section 181(1) and (4) of the Mines and Quarries Act 1954;

"quarry" is to be construed in accordance with regulation 3 of the Quarries Regulations 1999.**]**

Textual Amendments

F61 Words in s. 42(2) substituted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 26(a)**; S.S.I. 2014/160, art. 2(1)(2), sch.

F62 S. 42(5) 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)**

F63 Words in s. 42(6) substituted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 26(b)**; S.S.I. 2014/160, art. 2(1)(2), sch.

Marginal Citations

M9 1954 c. 70.

43 Railway engines.

(1) Section 1(prohibition of emissions of dark smoke) shall apply in relation to railway locomotive engines as it applies in relation to buildings.

(2) In the application of section 1 to such engines, for the reference in subsection (1) of that section to the occupier of the building there shall be substituted a reference to the owner of the engine.

(3) The owner of any railway locomotive engine shall use any practicable means there may be for minimising the emission of smoke from the chimney on the engine and, if he fails to do so, he shall, if smoke is emitted from that chimney, be guilty of an offence.

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(4) A person guilty of an offence under subsection (3) shall be 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.

(5) Except as provided in this section, nothing in Parts I to III applies to smoke, grit or dust from any railway locomotive engine.

Modifications etc. (not altering text)
C18 Power to exclude conferred (27.8.1993) by 1993 c. 11, **s. 45(1)(a)**

44 Vessels.

(1) Section 1 (prohibition of emissions of dark smoke) shall apply in relation to vessels in waters to which this section applies as it applies in relation to buildings.

(2) In the application of section 1 to a vessel—
  (a) for the reference in subsection (1) of that section to the occupier of the building there shall be substituted a reference to the owner of, and to the master or other officer or person in charge of, the vessel;
  (b) references to a furnace shall be read as including references to an engine of the vessel; and
  (c) subsection (5) of that section shall be omitted;

and a person guilty of an offence under that section in relation to a vessel shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) For the purposes of this Act a vessel in any waters to which this section applies which are not within the district of any local authority shall be deemed to be within the district of the local authority whose district includes that point on land which is nearest to the spot where the vessel is.

(4) The waters to which this section applies are—
  (a) all waters not navigable by sea-going ships; and
  (b) all waters navigable by sea-going ships which are within the seaward limits of the territorial waters of the United Kingdom and are contained within any port, harbour, river, estuary, haven, dock, canal or other place so long as a person or body of persons is empowered by or under any Act to make charges in respect of vessels entering it or using facilities in it.

(5) In subsection (4) "charges" means any charges with the exception of light dues, local light dues and any other charges payable in respect of lighthouses, buoys or beacons and of charges in respect of pilotage.

(6) Except as provided in this section, nothing in Parts I to III applies to smoke, grit or dust from any vessel.

45 Exemption for purposes of investigations and research.

(1) If the local authority are satisfied, on the application of any person interested, that it is expedient to do so for the purpose of enabling investigations or research relevant to the problem of the pollution of the air to be carried out without rendering the applicant

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liable to proceedings brought under or by virtue of any of the provisions of this Act or the [M10]Environmental Protection Act 1990 mentioned below, the local authority may by notice in writing given to the applicant exempt, wholly or to a limited extent,—

(a) any chimney from the operation of sections 1 (dark smoke), 5 (grit and dust), 20 (smoke in smoke control area) and 43 (railway engines) of this Act and Part III of the Environmental Protection Act 1990 (statutory nuisances);

(b) any furnace, boiler or industrial plant from the operation of section 4(2) (new furnaces to be as far as practicable smokeless);

(c) any premises from the operation of section 2 (emissions of dark smoke);

(d) any furnace from the operation of sections 6 or 8 (arrestment plant) and 10 (measurement of grit, dust and fumes by occupier), and

(e) the acquisition or sale of any fuel specified in the notice from the operation of section 23 (acquisition and sale of unauthorised fuel in smoke control area),

in each case subject to such conditions, if any, and for such period as may be specified in the notice.

(2) Any person who has applied to the local authority for an exemption under this section may, if he is dissatisfied with the decision of the authority on the application, appeal to the Secretary of State; and the Secretary of State may, if he thinks fit, by notice in writing given to the applicant and the local authority, give any exemption which the authority might have given or vary the terms of any exemption which they have given.

Marginal Citations

M10 1990 c. 43.

46 Crown premises, etc.

(1) It shall be part of the functions of the local authority, in cases where it seems to them proper to do so, to report to the responsible Minister any cases of—

(a) emissions of dark smoke, or of grit or dust, from any premises which are under the control of any Government department and are occupied for the public service of the Crown or for any of the purposes of any Government department;

(b) emissions of smoke, whether dark smoke or not, from any such premises which are within a smoke control area;

(c) emissions of smoke, whether dark smoke or not, from any such premises which appear to them to constitute a nuisance to the inhabitants of the neighbourhood; or

(d) emissions of dark smoke from any vessel of Her Majesty's navy, or any Government ship in the service of the Secretary of State while employed for the purposes of Her Majesty's navy, which appear to them to constitute a nuisance to the inhabitants of the neighbourhood,

and on receiving any such report the responsible Minister shall inquire into the circumstances and, if his inquiry reveals that there is cause for complaint, shall employ all practicable means for preventing or minimising the emission of the smoke, grit or dust or for abating the nuisance and preventing a recurrence of it, as the case may be.

(2) Subsection (1) shall apply to premises occupied for the purposes of the Duchy of Lancaster or the Duchy of Cornwall as it applies to premises occupied for the public

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service of the Crown which are under the control of a Government department, with the substitution, in the case of the Duchy of Cornwall, for references to the responsible Minister of references to such person as the Duke of Cornwall or the possessor for the time being of the Duchy of Cornwall appoints.

(3) The fact that there subsists in any premises an interest belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall, or belonging to a Government department or held in trust for Her Majesty for the purposes of a Government department, shall not affect the application of this Act to those premises so long as that interest is not the interest of the occupier of the premises, and this Act shall have effect accordingly in relation to the premises and that and all other interests in the premises.

(4) Section 44 (vessels) shall, with the omission of the reference in subsection (2) of that section to the owner, apply to vessels owned by the Crown, except that it shall not apply to vessels of Her Majesty's navy or to Government ships in the service of the Secretary of State while employed for the purposes of Her Majesty's navy.

(5) This Act (except Parts IV and V) shall have effect in relation to premises occupied for the service of a visiting force as if the premises were occupied for the public service of the Crown and were under the control of the Government department by arrangement with whom the premises are occupied.

(6) In this section—

"Government ship" has the same meaning as in **[**[F64] the Merchant Shipping Act 1995**]**; and

"visiting force" means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the [M11]Visiting Forces Act 1952.

Textual Amendments

F64 Words in definition of "Government ship" in s. 46(6) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 94(a)** (with s. 312(1), Sch. 14 para. 1)

Modifications etc. (not altering text)

C19 S. 46(1) functions made exercisable concurrently or jointly with the Welsh Ministers by 2006 c. 32, Sch. 3A para. 1 (as inserted (1.4.2018) by Wales Act 2017 (c. 4), s. 71(4), **Sch. 4 para. 1** (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(p))

Marginal Citations

M11 1952 c. 67.

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PART VII

MISCELLANEOUS AND GENERAL

Power to apply certain provisions to fumes and gases

47 Application to fumes and gases of certain provisions as to grit, dust and smoke.

(1) The Secretary of State may by regulations—

(a) apply all or any of the provisions of sections 5, 6, 7, 42(4) 43(5), 44(6) and 46(1) to fumes or prescribed gases or both as they apply to grit and dust;

(b) apply all or any of the provisions of section 4 to fumes or prescribed gases or both as they apply to smoke; and

(c) apply all or any of the provisions of section 11 to prescribed gases as they apply to grit and dust,

subject, in each case, to such exceptions and modifications as he thinks expedient.

(2) No regulations shall be made under this section unless a draft of the regulations has been laid before and approved by each House of Parliament.

(3) In the application of any provision of this Act to prescribed gases by virtue of regulations under this section, any reference to the rate of emission of any substance shall be construed as a reference to the percentage by volume or by mass of the gas which may be emitted during a period specified in the regulations.

(4) In this section—

"gas" includes vapour and moisture precipitated from vapour; and

"prescribed" means prescribed in regulations under this section.

Power to give effect to international agreements

48 Power to give effect to international agreements.

The Secretary of State may by regulations provide that any provision of Parts IV and V, or of this Part (apart from this section) so far as relating to those Parts, shall have effect with such modifications as are prescribed in the regulations with a view to enabling the Government of the United Kingdom to give effect to any provision made by or under any international agreement to which the Government is for the time being a party.

Administration and enforcement

49 Unjustified disclosures of information.

(1) If a person discloses any information relating to any trade secret used in carrying on any particular undertaking which has been given to him or obtained by him by virtue of this Act **[**[F65]or in the exercise of a power in Schedule 5 to the Consumer Rights Act 2015 for the purposes of the duty in section 30(4) or (7) or 31(4)(a) of this Act**]**, he shall, subject to subsection (2), be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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(2) A person shall not be guilty of an offence under subsection (1) by reason of the disclosure of any information if the disclosure is made—
- (a) in the performance of his duty;
- (b) in pursuance of section 34(1)(b); or
- (c) with the consent of a person having a right to disclose the information.

Textual Amendments

F65 Words in s. 49(1) inserted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 6 para. 55**; S.I. 2015/1630, art. 3(i)

50 Cumulative penalties on continuance of certain offences.

(1) Where—
- (a) a person is convicted of an offence which is subject to cumulative penalties on continuance in accordance with this section; and
- (b) it is shown to the satisfaction of the court that the offence was substantially a repetition or continuation of an earlier offence by him after he had been convicted of the earlier offence,

the penalty provided by subsection (2) shall apply instead of the penalty otherwise specified for the offence.

(2) Where this subsection applies the person convicted shall be liable on summary conviction to a fine not exceeding—
- (a) level 5 on the standard scale; or
- (b) £50 for every day on which the earlier offence has been so repeated or continued by him within the three months next following his conviction of that offence,

whichever is the greater.

(3) Where an offence is subject to cumulative penalties in accordance with this section—
- (a) the court by which a person is convicted of the original offence may fix a reasonable period from the date of conviction for compliance by the defendant with any directions given by the court; and
- (b) where a court has fixed such a period, the daily penalty referred to in subsection (2) is not recoverable in respect of any day before the end of that period.

51 Duty to notify occupiers of offences.

(1) If, in the opinion of an authorised officer of the local authority—
- (a) an offence is being or has been committed under section 1, 2 or 20 (prohibition of certain emissions of smoke); [F66]. . .
- [F66](b) . . . . . .

he shall, unless he has reason to believe that notice of it has already been given by or on behalf of the local authority, as soon as may be notify the appropriate person, and, if his notification is not in writing, shall before the end of the four days next following the day on which he became aware of the offence, confirm the notification in writing.

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(2) For the purposes of subsection (1), the appropriate person to notify is the occupier of the premises, the person having possession of the boiler or plant, the owner of the railway locomotive engine or the owner or master or other officer or person in charge of the vessel concerned, as the case may be.

(3) In any proceedings for an offence under section 1, 2 or 20 it shall be a defence to prove that the provisions of subsection (1) have not been complied with in the case of the offence; and if no such notification as is required by that subsection has been given before the end of the four days next following the day of the offence, that subsection shall be taken not to have been complied with unless the contrary is proved.

Textual Amendments

F66 S. 51(1)(b) and word "or" immediately preceding 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)**

52 Offences committed by bodies corporate.

(1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members this section shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

53 Offence due to act or default of another.

(1) Where the commission by any person of an offence under this Act is due to the act or default of some other person, that other person shall be guilty of the offence.

(2) A person may be charged with and convicted of an offence by virtue of this section whether or not proceedings for the offence are taken against any other person.

54 Power of county court to authorise works and order payments.

(1) If works are reasonably necessary in or in connection with a building in order to enable the building to be used for some purpose without contravention of any of the provisions of this Act (apart from Parts IV and V), the occupier of the building—

(a) may, if by reason of a restriction affecting his interest in the building he is unable to carry out the works without the consent of the owner of the building or some other person interested in the building and is unable to obtain that consent, apply to the county court for an order to enable the works to be carried out by him; and

(b) may, if he considers that the whole or any proportion of the cost of carrying out the works should be borne by the owner of the building or some other person interested in the building, apply to the county court for an order directing the

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owner or other person to indemnify him, either wholly or in part, in respect of that cost;

and on an application under paragraph (a) or (b) the court may make such order as may appear to the court to be just.

(2) In the application of this section to Scotland for any reference to the county court there shall be substituted a reference to the sheriff.

55 General provisions as to enforcement.

(1) It shall be the duty of the local authority to enforce—
  (a) the provisions of Parts I to III, section 33 and Part VI; and
  (b) the provisions of this Part so far as relating to those provisions;

but nothing in this section shall be taken as extending to the enforcement of any building regulations.

(2) A local authority in England and Wales may institute proceedings for an offence under section 1 or 2 (prohibition of emissions of dark smoke) in the case of any smoke which affects any part of their district notwithstanding, in the case of an offence under section 1, that the smoke is emitted from a chimney outside their district and, in the case of an offence under section 2, that the smoke is emitted from premises outside their district.

(3) Nothing in this section shall be taken as authorising a local authority in Scotland to institute proceedings for an offence against this Act.

56 Rights of entry and inspection etc.

(1) Any person authorised in that behalf by a local authority may at any reasonable time—
  (a) enter upon any land or vessel for the purpose of—
    (i) performing any function conferred on the authority or that person by virtue of this Act,
    (ii) determining whether, and if so in what manner, such a function should be performed, or
    (iii) determining whether any provision of this Act or of an instrument made under this Act is being complied with; and
  (b) carry out such inspections, measurements and tests on the land or vessel or of any articles on it and take away such samples of the land or articles as he considers appropriate for such a purpose.

(2) Subsection (1) above does not, except in relation to work under section 24(1) (adaptations to dwellings in smoke control area), apply in relation to a private dwelling.

(3) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—
  (a) that admission to any land or vessel which a person is entitled to enter in pursuance of subsection (1) has been refused to that person or that refusal is apprehended or that the land or vessel is unoccupied or that the occupier is temporarily absent or that the case is one of emergency or that an application for admission would defeat the object of the entry; and

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(b) that there is reasonable ground for entry upon the land or vessel for the purpose for which entry is required,

then, subject to subsection (4), the justice may by warrant under his hand authorise that person to enter the land or vessel, if need be by force.

(4) A justice of the peace shall not issue a warrant in pursuance of subsection (3) in respect of any land or vessel unless he is satisfied—

(a) that admission to the land or vessel in pursuance of subsection (1) was sought after not less than seven days notice of the intended entry had been served on the occupier; or

(b) that admission to the land or vessel in pursuance of that subsection was sought in an emergency and was refused by or on behalf of the occupier; or

(c) that the land or vessel is unoccupied; or

(d) that an application for admission to the land or vessel would defeat the object of the entry.

(5) A warrant issued in pursuance of this section shall continue in force until the purpose for which the entry is required has been satisfied.

(6) In the application of this section to Scotland—

(a) any reference to a justice of the peace shall be construed as including a reference to the sheriff; and

(b) in subsection (3) for "on sworn information in writing" there is substituted " by evidence on oath ".

[[F67](7) This section does not apply in relation to—

(a) a function conferred on a local authority by Part 4, or

(b) a provision of an instrument made under that Part.**]**

Textual Amendments

F67 S. 56(7) inserted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 6 para. 56**; S.I. 2015/1630, art. 3(i)

Modifications etc. (not altering text)

C20 S. 56 applied (with modifications) (1.10.1994) by S.I. 1994/2249, **reg. 3(4)**

57 Provisions supplementary to section 56.

(1) A person authorised to enter upon any land or vessel in pursuance of section 56 shall, if so required, produce evidence of his authority before he enters upon the land or vessel.

(2) A person so authorised may take with him on to the land or vessel in question such other persons and such equipment as may be necessary.

(3) Admission to any land or vessel used for residential purposes and admission with heavy equipment to any other land or vessel shall not, except in an emergency or in a case where the land or vessel is unoccupied, be demanded as of right in pursuance of section 56(1) unless notice of the intended entry has been served on the occupier not less than seven days before the demand.

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(4) A person who, in the exercise of powers conferred on him by virtue of section 56 or this section, enters upon any land or vessel which is unoccupied or of which the occupier is temporarily absent shall leave the land or vessel as effectually secured against unauthorised entry as he found it.

(5) It shall be the duty of a local authority to make full compensation to any person who has sustained damage by reason of—

(a) the exercise by a person authorised by the authority of any of the powers conferred on the person so authorised by virtue of section 56 or this section; or

(b) the failure of a person so authorised to perform the duty imposed on him by subsection (4),

except where the damage is attributable to the default of the person who sustained it; and any dispute as to a person's entitlement to compensation in pursuance of this subsection or as to the amount of the compensation shall be determined by arbitration.

(6) A person who wilfully obstructs another person acting in the exercise of any powers conferred on the other person by virtue of section 56 or this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) In section 56 and this section any reference to an emergency is a reference to a case where a person requiring entry to any land or vessel has reasonable cause to believe that circumstances exist which are likely to endanger life or health and that immediate entry to the land or vessel is necessary to verify the existence of those circumstances or to ascertain their cause or to effect a remedy.

Modifications etc. (not altering text)

C21 S. 57 applied (with modifications) (1.10.1994) by S.I. 1994/2249, **reg. 3(4)**

58 Power of local authorities to obtain information.

(1) A local authority may serve on any person a notice requiring him to furnish to the authority, within a period or at times specified in the notice and in a form so specified, any information so specified which the authority reasonably considers that it needs for the purposes of any function conferred on the authority by Part [F68]... V of this Act (or by this Part of this Act so far as relating to **[**[F69]that Part**]**).

(2) The Secretary of State may by regulations provide for restricting the information which may be required in pursuance of subsection (1) and for determining the form in which the information is to be so required.

(3) Any person who—

(a) fails without reasonable excuse to comply with the requirements of a notice served on him in pursuance of this section; or

(b) in furnishing any information in compliance with such a notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is 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.

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Textual Amendments

F68 Words in s. 58(1) omitted (1.10.2015) by virtue of Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 6 para. 57(a)**; S.I. 2015/1630, art. 3(i) (with art. 8)

F69 Words in s. 58(1) substituted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 6 para. 57(b)**; S.I. 2015/1630, art. 3(i)

Modifications etc. (not altering text)

C22 S. 58 applied (with modifications) (1.10.1994) by S.I. 1994/2249, **reg. 3(4)**

59 [[F70] Inquiries].

(1) The Secretary of State may cause **[**[F71]an inquiry**]** to be held in any case in which he considers it appropriate for **[**[F72] an inquiry**]**to be held either in connection with a provision of this Act or with a view to preventing or dealing with air pollution at any place.

(2) Subsections (2) to (5) of section 250 of the [M12]Local Government Act 1972 (which contains supplementary provisions with respect to local inquiries held in pursuance of that section) shall, without prejudice to the generality of subsection (1) of that section, apply to inquiries in England and Wales in pursuance of subsection (1) as they apply to inquiries in pursuance of that section.

(3) Subsections (2) to (8) of section 210 of the [M13]Local Government (Scotland) Act 1973 (local inquiries) shall, without prejudice to the generality of subsection (1) of that section, apply to inquiries in Scotland in pursuance of subsection (1) as they apply to inquiries held in pursuance of that section.

Textual Amendments

F70 Word in side-note to s. 59 substituted (27.8.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 197** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 2**; S.I. 1996/186, **art. 3**

F71 words in s. 59(1) substituted (27.8.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 197(a)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 2**; S.I. 1996/186, **art. 3**

F72 Words in s. 59(1) substituted (27.8.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 197(b)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 2**; S.I. 1996/186, **art. 3**

Marginal Citations

M12 1972 c. 70.

M13 1973 c. 65.

60 Default powers. E+W

(1) If the Secretary of State is satisfied that any local authority (in this section referred to as the "defaulting authority") have failed to perform any functions which they ought to have performed, he may make an order—

(a) declaring the authority to be in default; and

(b) directing the authority to perform such of their functions as are specified in the order;

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and he may specify the manner in which and the time or times within which those functions are to be performed by the authority.

(2) If the defaulting authority fails to comply with any direction contained in such an order, the Secretary of State may, instead of enforcing the order by mandamus, make an order transferring to himself such of the functions of the authority as he thinks fit.

(3) Where any functions of the defaulting authority are transferred in pursuance of subsection (2) above, the amount of any expenses which the Secretary of State certifies were incurred by him in performing those functions shall on demand be paid to him by the defaulting authority.

(4) Where any expenses are in pursuance of subsection (3) required to be paid by the defaulting authority in respect of any functions transferred in pursuance of this section—
   (a) the expenses shall be defrayed by the authority in the like manner, and shall be debited to the like account, as if the functions had not been transferred and the expenses had been incurred by the authority in performing them; and
   (b) the authority shall have the like powers for the purpose of raising any money required for the purpose of paragraph (a) as the authority would have had for the purpose of raising money required for defraying expenses incurred for the purposes of the functions in question.

(5) An order transferring any functions of the defaulting authority in pursuance of subsection (2) may provide for the transfer to the Secretary of State of such of the property, rights, liabilities and obligations of the authority as he 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 property, rights, liabilities and obligations held by him for the purposes of the transferred functions.

(6) An order made under this section may be varied or revoked by a subsequent order so made.

(7) This section does not apply to a failure by a local authority—
   (a) to discharge their functions under section 18 (declaration of smoke control areas);
   (b) to submit proposals to the Secretary of State in pursuance of a direction under subsection (1) of section 19 (Secretary of State's power to require creation of smoke control area); or
   (c) to perform a duty imposed on them by or by virtue of subsection (4) or (6) of that section.

(8) In this section "functions", in relation to an authority, means functions conferred on the authority by virtue of this Act.

Extent Information

E3 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only.

Status: *Point in time view as at 01/04/2018. This version of this Act contains provisions that are prospective.*
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60 Default powers. S

(1) If the Secretary of State is satisfied that any local authority (in this section referred to as the "defaulting authority") have failed to perform any functions which they ought to have performed, he may make an order—

(a) declaring the authority to be in default; and

(b) directing the authority to perform such of their functions as are specified in the order;

and he may specify the manner in which and the time or times within which those functions are to be performed by the authority.

(2) If the defaulting authority fails to comply with any direction contained in such an order, the Secretary of State may, instead of enforcing the order by mandamus, make an order transferring to himself such of the functions of the authority as he thinks fit.

(3) Where any functions of the defaulting authority are transferred in pursuance of subsection (2) above, the amount of any expenses which the Secretary of State certifies were incurred by him in performing those functions shall on demand be paid to him by the defaulting authority.

(4) Where any expenses are in pursuance of subsection (3) required to be paid by the defaulting authority in respect of any functions transferred in pursuance of this section—

(a) the expenses shall be defrayed by the authority in the like manner, and shall be debited to the like account, as if the functions had not been transferred and the expenses had been incurred by the authority in performing them; and

(b) the authority shall have the like powers for the purpose of raising any money required for the purpose of paragraph (a) as the authority would have had for the purpose of raising money required for defraying expenses incurred for the purposes of the functions in question.

(5) An order transferring any functions of the defaulting authority in pursuance of subsection (2) may provide for the transfer to the Secretary of State of such of the property, rights, liabilities and obligations of the authority as he 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 property, rights, liabilities and obligations held by him for the purposes of the transferred functions.

(6) An order made under this section may be varied or revoked by a subsequent order so made.

(7) This section does not apply to a failure by a local authority—

(a) to discharge their functions under section 18 (declaration of smoke control areas);

(b) to submit proposals to the **[**[F110]SEPA**]** in pursuance of a direction under subsection (1) of section 19 (**[**[F110]SEPA's**]** power to require creation of smoke control area); or

(c) to perform a duty imposed on them by or by virtue of subsection (4) or (6) of that section.

(8) In this section "functions", in relation to an authority, means functions conferred on the authority by virtue of this Act.

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Extent Information

E8 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only.

Textual Amendments

F110 Words in s. 60(7)(b) substituted (S.) (28.7.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 198** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 2**; S.I. 1996/186, **art. 3**

61 Joint exercise of local authority functions.

(1) Sections 6, 7, 9 and 10 of the [M14]Public Health Act 1936 (provisions relating to joint boards) shall, so far as applicable, have effect in relation to this Act as if the provisions of this Act were provisions of that Act.

[F73](2) . . . . . .

(3) Without prejudice to subsections (1) and (2), any two or more local authorities may combine for the purpose of declaring an area to be a smoke control area and in that event—

(a) the smoke control area may be the whole of the districts of those authorities or any part of those districts;

(b) the references in section 18, Schedule 1 and paragraph 1 of Schedule 2 to the local authority shall be read as references to the local authorities acting jointly;

(c) the reference in paragraph 1 of Schedule 1 to a place in the district of the local authority shall be construed as a reference to a place in each of the districts of the local authorities;

but, except as provided in this subsection, references in this Act to the local authority shall, in relation to a building or dwelling, or to a boiler or industrial plant, in the smoke control area, be read as references to that one of the local authorities within whose district the building, dwelling, boiler or plant is situated.

(4) For the avoidance of doubt it is hereby declared that where a **[**[F74]port health authority or**]** joint board has functions, rights or liabilities under this Act—

(a) any reference in this Act to a local **[**[F74]authority or**]** its district includes, in relation to those functions, rights or liabilities, a reference to the **[**[F74]port health authority or**]** board or its district;

(b) for the purposes of this Act, no part of the district of any such **[**[F74]port health authority or**]** board is to be treated, in relation to any matter falling within the competence of the **[**[F74]authority or**]** board, as forming part of the district of any other authority.

(5) Any premises which extend into the districts of two or more authorities shall be treated for the purposes of this Act as being wholly within such one of those districts—

(a) in England and Wales, as may from time to time be agreed by those authorities; or

(b) in Scotland, as may from time to time be so agreed or, in default of agreement, determined by the Secretary of State.

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Textual Amendments

F73 S. 61(2) repealed (S.) (1.10.2009) by Public Health etc. (Scotland) Act 2008 (asp 5), s. 128(2), **Sch. 3 Pt. 1** (with s. 127); S.S.I. 2009/319, art. 2(a), Sch. 1

F74 Words in s. 61(4) repealed (S.) (1.10.2009) by Public Health etc. (Scotland) Act 2008 (asp 5), s. 128(2), **Sch. 3 Pt. 1** (with s. 127); S.S.I. 2009/319, art. 2(a), Sch. 1

Marginal Citations

M14 1936 c. 49.

62 Application of certain provisions of Part XII of Public Health Act 1936 and corresponding Scottish legislation.

(1) In the application of this Act to England and Wales, the following provisions of Part XII of the [M15]Public Health Act 1936 shall have effect in relation to the provisions of this Act (apart from Parts IV and V) as if those provisions were provisions of that Act—

section 275 (power of local authority to execute works);

section 276 (power of local authority to sell materials);

section 278 (compensation to individuals for damage resulting from exercise of powers under Act);

section 283 (form of notices);

section 284 (authentication of documents);

section 285 (service of notices);

section 289 (power to require occupier to permit works to be executed by owner);

section 291 (expenses to be a charge on the premises);

section 293 (recovery of expenses);

section 294 (limitation of liability of certain owners);

[F75] . . . . . .

section 305 (protection of members and officers of local authorities from personal liability).

(2) In the application of this Act to Scotland—

(a) the following enactments shall have effect in relation to the provisions of this Act (apart from Parts IV and V) as if those provisions were provisions of the Act in which that enactment is comprised—

(i) in the [M16]Public Health (Scotland) Act 1897, section 161 (joint owners) and section 164 (compensation); and

(ii) in the [M17]Housing (Scotland) Act 1987, section 131 and Schedule 9 (charging orders), section 319 (penalty for preventing execution of works), section 325 (furnishing information for service of documents), section 329 (default powers), section 330 (form of notices) and section 336 (limitation on liability of trustee);

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(b) for the purposes of the application of section 329 of the Housing (Scotland) Act 1987 by virtue of paragraph (a) above, subsections (1) and (3) of section 196 of the [M18]Housing (Scotland) Act 1966 shall apply to section 329 as they originally applied to the provisions which it re-enacted;

[F76](c) . . . . . and

(d) section 319 of that Act (penalty for preventing execution of works) shall have effect as if subsection (1) of that section included a reference to this Act (apart from Parts IV and V) and as if sub-paragraphs (b) and (c) were omitted.

Textual Amendments

F75 Words in s. 62(1) repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. I** Group4

F76 S. 62(2)(c) repealed (S.) (1.4.2010) by Housing (Scotland) Act 2006 (asp 1), s. 195(3), **Sch. 7** (with s. 193); S.S.I. 2009/122, art. 3

Marginal Citations

M15 1936 c. 49.

M16 1897 c. 38.

M17 1987 c. 26.

M18 1966 c. 49.

General

63 Regulations and orders.

(1) Any power of the Secretary of State under this Act to make an order or regulations—

(a) includes power to make different provision in the order or regulations for different circumstances;

(b) includes power to make such incidental, supplemental and transitional provision as the Secretary of State considers appropriate; and

(c) is exercisable by statutory instrument except in the case of the powers conferred by sections 19(4) and 60 and paragraph 3 of Schedule 3.

(2) Any statutory instrument containing regulations made under this Act, except an instrument containing regulations a draft of which is required by section 6(3), 10(5) or 47(2) to be approved by a resolution of each House of Parliament, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Any statutory instrument containing an order under section 21 or 22 shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Extent Information

E4 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only.

64 General provisions as to interpretation.

(1) In this Act, except so far as the context otherwise requires,—

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"authorised officer" means any officer of a local authority authorised by them in writing, either generally or specially, to act in matters of any specified kind or in any specified matter;

"building regulations" means, as respects Scotland, any statutory enactments, byelaws, rules and regulations or other provisions under whatever authority made, relating to the construction, alteration or extension of buildings;

"caravan" means a caravan within the meaning of Part I of the [M19]Caravan Sites and Control of Development Act 1960, disregarding the amendment made by section 13(2) of the [M20]Caravan Sites Act 1968, which usually and for the time being is situated on a caravan site within the meaning of that Act;

"chimney" includes structures and openings of any kind from or through which smoke, grit, dust or fumes may be emitted, and, in particular, includes flues, and references to a chimney of a building include references to a chimney which serves the whole or a part of a building but is structurally separate from the building;

"dark smoke" has the meaning given by section 3(1);

"day" means a period of twenty-four hours beginning at midnight;

"domestic furnace" means any furnace which is—

(a) designed solely or mainly for domestic purposes, and

(b) used for heating a boiler with a maximum heating capacity of less than 16.12 kilowatts;

"fireplace" includes any furnace, grate or stove, whether open or closed;

"fixed boiler or industrial plant" means any boiler or industrial plant which is attached to a building or is for the time being fixed to or installed on any land;

"fumes" means any airborne solid matter smaller than dust;

"industrial plant" includes any still, melting pot or other plant used for any industrial or trade purposes, and also any incinerator used for or in connection with any such purposes;

"local authority" means—

(a) in England [F77]. . ., the council of a district or a London borough, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple;

(aa) **[**[F78]in Wales, the council of a county or county borough;**]**

(b) in Scotland, **[**[F79]a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**]**;

"owner", in relation to premises—

(a) as respects England and Wales, means the person for the time being receiving the rackrent of the premises, whether on his own account or as agent or trustee for another person, or who would so receive the rackrent if the premises were let at a rackrent; and

(b) as respects Scotland, means the person for the time being entitled to receive or who would, if the premises were let, be entitled to receive, the rents of the premises and includes a trustee, factor, **[**[F80]or person entitled to act as the legal representative of a person under disablilty by reason of nonage or mental or other incapacity**]** and, in the case of public or municipal property, includes the persons to whom the management of the property is entrusted;

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[[F81]"port health authority" means, as respects Scotland, a port local authority constituted under Part X of the [M21]Public Health (Scotland) Act 1897 and includes a reference to a joint port health authority constituted under that Part;**]**

"practicable" means reasonably practicable having regard, amongst other things, to local conditions and circumstances, to the financial implications and to the current state of technical knowledge, and "practicable means" includes the provision and maintenance of plant and its proper use;

"premises" includes land;

"smoke", includes soot, ash, grit and gritty particles emitted in smoke; and

"vessel" has the same meaning as **[**[F82]ship in the Merchant Shipping Act 1995**]**.

(2) Any reference in this Act to the occupier of a building shall, in relation to any building different parts of which are occupied by different persons, be read as a reference to the occupier or other person in control of the part of the building in which the relevant fireplace is situated.

(3) In this Act any reference to the rate of emission of any substance or any reference which is to be understood as such a reference shall, in relation to any regulations or conditions, be construed as a reference to the quantities of that substance which may be emitted during a period specified in the regulations or conditions.

(4) In this Act, except so far as the context otherwise requires, "private dwelling" means any building or part of a building used or intended to be used as such, and a building or part of a building is not to be taken for the purposes of this Act to be used or intended to be used otherwise than as a private dwelling by reason that a person who resides or is to reside in it is or is to be required or permitted to reside in it in consequence of his employment or of holding an office.

(5) In considering for the purposes of this Act whether any and, if so, what works are reasonably necessary in order to make suitable provision for heating and cooking in the case of a dwelling or are reasonably necessary in order to enable a building to be used for a purpose without contravention of any of the provisions of this Act, regard shall be had to any difficulty there may be in obtaining, or in obtaining otherwise than at a high price, any fuels which would have to be used but for the execution of the works.

(6) Any furnaces which are in the occupation of the same person and are served by a single chimney shall, for the purposes of sections 5 to 12, 14 and 15, be taken to be one furnace.

Textual Amendments

F77 S. 64(1): words in definition of "local authority" para. (a) repealed (1.4.1996) by 1994 c. 19, ss. 22(3), 66(8), Sch. 9 para. 18, **Sch. 18** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, arts. 3, 4, Sch. 1, **Sch. 2**

F78 S. 64(1): definition of "local authority" para. (aa) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 18** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

F79 S. 64(1): words in definition of "local authority" para. (b) substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 180** (with s. 128(8)); S.I. 1996/323, **art. 4(1)(c)**

F80 S. 64(1): words in definition of "owner" substituted (S.) (2.4.2001) by 2000 asp 4, s. 88(2), **Sch. 5 para. 25**; S.S.I. 2001/16, art. 2, **Sch. 1**

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F81 Words in s. 64(1) repealed (S.) (1.10.2009) by Public Health etc. (Scotland) Act 2008 (asp 5), s. 128(2), **Sch. 3 Pt. 1** (with s. 127); S.S.I. 2009/319, art. 2(a), Sch. 1

F82 S. 64(1): words in definition of "vessel" substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 94(b)** (with s. 213, Sch. 14 para. 1)

Marginal Citations

M19 1960 c. 62.

M20 1968 c. 52.

M21 1897 c. 38.

65 Application to Isles of Scilly.

Parts IV and V, and this Part so far as relating to those Parts, shall have effect in their application to the Isles of Scilly with such modifications as the Secretary of State may by order specify.

[F83 66 Transitory provisions relating to Alkali, &c. Works Regulation Act 1906.

(1) Until the coming into force of the repeal by the M22 Environmental Protection Act 1990 of the M23 Alkali, &c. Works Regulation Act 1906—

(a) Part I of Schedule 3 shall have effect;

(b) this Act shall have effect subject to the modifications in Part II of that Schedule; and

(c) the Alkali, &c. Works Regulation Act 1906 shall continue to have effect as amended by Schedule 2 to the M24 Clean Air Act 1956 notwithstanding the repeal by this Act of the last-mentioned Act.

(2) On the coming into force of the repeal by the M25 Environmental Protection Act 1990 of the M26 Alkali, &c. Works Regulation Act 1906, this section and Schedule 3 shall cease to have effect.**]**

Textual Amendments

F83 S. 66 ceased to have effect (in relation to activities falling within a prescribed process which has on 1.12.1994 ceased to be a prescribed process, on that date; in relation to activities falling within a prescribed process which has ceased to be a prescribed process later than 1.12.1994, on the date on which that process ceased to be a prescribed process; for all remaining purposes on 16.12.1996) by virtue of 1993 c. 11, **s. 66(2)**; S.I. 1994/2854, **art. 2(1)**; S.I. 1996/3056, **art. 2**

Marginal Citations

M22 1990 c. 43.

M23 1906 c. 14.

M24 1956 c. 52.

M25 1990 c. 43.

M26 1906 c. 14.

67 Consequential amendments, transitional provisions and repeals.

(1) The enactments specified in Schedule 4 shall have effect subject to the amendments set out in that Schedule, being amendments consequential on the preceding provisions of this Act.

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(2) The transitional provisions and savings contained in Schedule 5 (which include provisions preserving the effect of transitional or saving provisions in enactments repealed by this Act) shall have effect.

(3) The enactments specified in Schedule 6 (which include spent enactments) are repealed to the extent specified in the third column of that Schedule.

Extent Information

E5 S. 67(3), so far as it relates to the repeal of sections 75 and 77 of the Control of Pollution Act 1974 extends to Northern Ireland

68 Short title, commencement and extent.

(1) This Act may be cited as the Clean Air Act 1993.

[F84](2) . . . . . .

(3) The following provisions of this Act (apart from this section) extend to Northern Ireland—

(a) section 30;

(b) section 32 so far as it relates to regulations under section 30; and

(c) section 67(3) and Schedule 6, so far as they relate to the repeal of sections 75 and 77 of the [M27]Control of Pollution Act 1974;

but otherwise this Act does not extend to Northern Ireland.

Textual Amendments

F84 S. 68(2) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 1 Pt. 13**

Marginal Citations

M27 1974 c. 40.

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SCHEDULES

SCHEDULE 1

Section 18(4).

COMING INTO OPERATION OF SMOKE CONTROL ORDERS

1 Before making a smoke control order the local authority shall publish in the London Gazette and once at least in each of two successive weeks in some newspaper circulating in the area to which the order will relate a notice—

(a) stating that the local authority propose to make the order, and its general effect;

(b) specifying a place in the district of the local authority where a copy of the order and of any map or plan referred to in it may be inspected by any person free of charge at all reasonable times during a period of not less than six weeks from the date of the last publication of the notice; and

(c) stating that within that period any person who will be affected by the order may by notice in writing to the local authority object to the making of the order.

2 Besides publishing such a notice, the local authority shall post, and keep posted throughout the period mentioned in paragraph 1(b), copies of the notice in such number of conspicuous places within the area to which the order will relate as appear to them necessary for the purpose of bringing the proposal to make the order to the notice of persons who will be affected.

3 If an objection is duly made to the local authority within the period mentioned in paragraph 1(b), and is not withdrawn, the local authority shall not make the order without first considering the objection.

4 Subject to paragraphs 5 and 6, an order shall come into operation on such date not less than six months after it is made as may be specified in it.

5 An order varying a previous order so as to exempt specified buildings or classes of building or specified fireplaces or classes of fireplace from the operation of section 20 (prohibition of smoke emissions in smoke control area) may come into operation on, or at any time after, the date on which it is made.

6 If, before the date on which the order is to come into operation, the local authority—

(a) pass a resolution postponing its coming into operation; and

(b) publish a notice stating the effect of the resolution in the London Gazette and once at least in each of two successive weeks in some newspaper circulating in the area to which the order will relate,

the order shall, unless its coming into operation is again postponed under this paragraph, come into operation on the date specified in the resolution.

7 In the application of this Schedule to Scotland, for any reference to the London Gazette there shall be substituted a reference to the Edinburgh Gazette.

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SCHEDULE 2

Section 25(1).

SMOKE CONTROL ORDERS: EXPENDITURE ON OLD PRIVATE DWELLINGS

Grants for expenditure incurred in adaptation of fireplaces

1 (1) This paragraph applies if, after the making of a smoke control order by a local authority, the owner or occupier of, or any person interested in, an old private dwelling which is or will be within a smoke control area as a result of the order incurs relevant expenditure.

(2) For the purposes of this paragraph "relevant expenditure" is expenditure on adaptations in or in connection with an old private dwelling to avoid contraventions of section 20 (prohibition of smoke emissions in smoke control area) which—

(a) is incurred before the coming into operation of the order and with the approval of the local authority given for the purposes of this paragraph; or

(b) is reasonably incurred in carrying out adaptations required by a notice given under section 24(1) (power of local authority to require certain adaptations).

(3) If the adaptations in question are carried out to the satisfaction of the local authority, the local authority—

(a) shall repay to him seven-tenths of the relevant expenditure; and

(b) may, if they think fit, also repay to him the whole or any part of the remainder of that expenditure.

(4) Where relevant expenditure is incurred by the occupier of a private dwelling who is not an owner of the dwelling and the adaptations in question consist of or include the provision of any cooking or heating appliance which can be readily removed from the dwelling without injury to itself or the fabric of the dwelling, the following provisions shall have effect as respects so much of the expenditure as represents the cost of the appliance, that is to say—

(a) not more than seven-twentieths of that part of that expenditure shall be repaid until two years from the coming into operation of the order; and

(b) any further repayment of that part of that expenditure shall be made only if the appliance has not by then been removed from the dwelling and, if made, shall be made to the person who is the occupier of the dwelling at the end of the two years.

(5) The approval of a local authority to the incurring of expenditure may be given for the purposes of this paragraph, if the authority think fit in the circumstances of any particular case, after the expenditure has been incurred.

(6) This paragraph has effect subject to paragraph 4.

Exclusion of grants in case of unsuitable appliances

2 For the purposes of this Schedule, an appliance is unsuitable for installation in any area or (as the case may be) in any district or part of Great Britain if it tends, by reason of its consumption of fuel (of whatever kind) or its consumption of fuel at times when it is generally used, to impose undue strain on the fuel resources available for that area, district or part.

3 (1) Sub-paragraph (2) applies if—

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(a) after a local authority have resolved to make a smoke control order declaring a smoke control area (not being an order varying a previous order so made); and

(b) before notice of the making of the order is first published in accordance with Schedule 1,

the authority pass a resolution designating any class of heating appliance as being, in their opinion, unsuitable for installation in that area.

(2) No payment shall be made by the authority under paragraph 1 in respect of expenditure incurred in providing, or in executing works for the purpose of the installation of, any heating appliance of the class designated by the resolution in or in connection with a dwelling within the area to which the order relates.

(3) No payment shall be made under paragraph 1 by a local authority in respect of expenditure incurred in providing, or in executing works for the purpose of the installation of, any heating appliance which, when the expenditure was incurred, fell within any class of appliance for the time being designated for the purposes of this paragraph by the Secretary of State as being in his opinion—

(a) unsuitable for installation in the district of that authority; or

(b) generally unsuitable for installation in the part of Great Britain with which the Secretary of State is concerned,

unless the approval of the local authority in respect of that expenditure was given for the purposes of paragraph 1 at a time when the appliance in question did not fall within any class of appliance so designated.

(4) Retrospective approval of expenditure may only be given by a local authority by virtue of paragraph 1(5) in the case of expenditure incurred in providing, or in executing works for the purpose of the installation of, a heating appliance, if the appliance—

(a) did not at the time when the expenditure was incurred; and

(b) does not when the approval is given,

fall within a class of appliance for the time being designated by the Secretary of State for the purposes of this paragraph as regards the district of that authority or generally.

(5) In accordance with the preceding provisions of this Schedule, expenditure within sub-paragraph (3) or (4) shall be left out of account for the purposes of paragraph 1.

Exchequer contributions to certain expenditure

4 (1) The Secretary of State may, out of money provided by Parliament, make a contribution towards the following expenses, of any local authority (if approved by him), that is to say—

(a) any expenses of the local authority in making payments under paragraph 1;

(b) any expenses incurred by them in making, in or in connection with old private dwellings owned by them or under their control, adaptations to avoid contraventions of section 20; and

(c) any expenses incurred by them in carrying out adaptations required by notices under section 24 in or in connection with old private dwellings.

(2) A contribution under this paragraph in respect of any expenses shall be a single payment equal—

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(a) in the case of expenses mentioned in sub-paragraph (1)(a), to four-sevenths of the amount of the expenses;

(b) in the case of expenses mentioned in sub-paragraph (1)(b), to two-fifths of the amount of the expenses; and

(c) in the case of expenses mentioned in sub-paragraph (1)(c), to four-sevenths of the amount arrived at by deducting the recoverable amount from the amount of those expenses.

(3) In sub-paragraph (2)(c), "the recoverable amount" means, in relation to any expenses, the fraction of those expenses (whether three-tenths or some smaller fraction determined by the local authority, in the case of those expenses, under section 24(2) or (3)) which the local authority have power to recover from the occupier or owner by virtue of section 24(2) or (3).

[F85SCHEDULE 3

Section 66(1)

PROVISIONS HAVING EFFECT UNTIL REPEAL OF ALKALI, &C WORKS REGULATION ACT 1906]

Textual Amendments

F85 Sch. 3 ceased to have effect (in relation to activities falling within a prescribed process which has on 1.12.1994 ceased to be a prescribed process, on that date; in relation to activities falling within a prescribed process which has ceased to be a prescribed process later than 1.12.1994, on the date on which that process ceased to be a prescribed process; for all remaining purposes on 16.12.1996) by virtue of 1993 c. 11, **s. 66(2)**; S.I. 1994/2854, **art. 2(1)**; S.I. 1996/3056, **art. 2**

[F86PART I]

RELATION OF THIS ACT TO ALKALI, &C. WORKS REGULATION ACT 1906

Textual Amendments

F86 Sch. 3 ceased to have effect (in relation to activities falling within a prescribed process which has on 1.12.1994 ceased to be a prescribed process, on that date; in relation to activities falling within a prescribed process which has ceased to be a prescribed process later than 1.12.1994, on the date on which that process ceased to be a prescribed process; for all remaining purposes on 16.12.1996) by virtue of 1993 c. 11, **s. 66(2)**; S.I. 1994/2854, **art. 2(1)**; S.I. 1996/3056, **art. 2**

[F87] (1) In this Part of this Schedule—

"the Alkali Act" means the M28Alkali, &c. Works Regulation Act 1906; and

"work subject or potentially subject to the Alkali Act" means—

(a) so much of any work registered under section 9 of that Act as is directly concerned in the processes which necessitate its registration under that section; and

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(b) so much of any work in the course of erection or alteration as will on completion of the erection or alteration be directly concerned in such processes.

(2) The Secretary of State may from time to time determine how much of any work mentioned in sub-paragraph (1) is or will be directly concerned as there mentioned and his determination shall, until revoked or varied by him, be conclusive.**]**

Textual Amendments

F87 Sch. 3 ceased to have effect (in relation to activities falling within a prescribed process which has on 1.12.1994 ceased to be a prescribed process, on that date; in relation to activities falling within a prescribed process which has ceased to be a prescribed process later than 1.12.1994, on the date on which that process ceased to be a prescribed process; for all remaining purposes on 16.12.1996) by virtue of 1993 c. 11, **s. 66(2)**; S.I. 1994/2854, **art. 2(1)**; S.I. 1996/3056, **art. 2**

Marginal Citations

M28 1906 c. 14.

[[F88]2 Subject to paragraphs 3 and 4, Parts I to III of this Act shall not apply to any work subject or potentially subject to the Alkali Act.**]**

Textual Amendments

F88 Sch. 3 ceased to have effect (in relation to activities falling within a prescribed process which has on 1.12.1994 ceased to be a prescribed process, on that date; in relation to activities falling within a prescribed process which has ceased to be a prescribed process later than 1.12.1994, on the date on which that process ceased to be a prescribed process; for all remaining purposes on 16.12.1996) by virtue of 1993 c. 11, **s. 66(2)**; S.I. 1994/2854, **art. 2(1)**; S.I. 1996/3056, **art. 2**

[[F89]3 If, on the application of the local authority, the Secretary of State is satisfied that in all the circumstances it is expedient to do so, he may by order exclude the application of paragraph 2 to the whole or any specified part of any work subject or potentially subject to the Alkali Act.**]**

Textual Amendments

F89 Sch. 3 ceased to have effect (in relation to activities falling within a prescribed process which has on 1.12.1994 ceased to be a prescribed process, on that date; in relation to activities falling within a prescribed process which has ceased to be a prescribed process later than 1.12.1994, on the date on which that process ceased to be a prescribed process; for all remaining purposes on 16.12.1996) by virtue of 1993 c. 11, **s. 66(2)**; S.I. 1994/2854, **art. 2(1)**; S.I. 1996/3056, **art. 2**

[[F90]4 While, by virtue of an order under paragraph 3 above, paragraph 2 is excluded from applying to any work or to any specified part of any work—

(a) in any proceedings brought under section 1, 2 or 20 in respect of the emission of smoke from the work or (as the case may be) from the specified part of the work it shall be a defence to prove that the best practicable means had been employed to prevent or minimise the alleged emission;

[F91](b) . . . . . .**]**

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Textual Amendments

F90 Sch. 3 ceased to have effect (in relation to activities falling within a prescribed process which has on 1.12.1994 ceased to be a prescribed process, on that date; in relation to activities falling within a prescribed process which has ceased to be a prescribed process later than 1.12.1994, on the date on which that process ceased to be a prescribed process; for all remaining purposes on 16.12.1996) by virtue of 1993 c. 11, **s. 66(2)**; S.I. 1994/2854, **art. 2(1)**; S.I. 1996/3056, **art. 2**

F91 Sch. 3 para. 4(b) 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**

[[F92]5 Any order made under paragraph 3 may be varied or revoked by a subsequent order of the Secretary of State.**]**

Textual Amendments

F92 Sch. 3 ceased to have effect (in relation to activities falling within a prescribed process which has on 1.12.1994 ceased to be a prescribed process, on that date; in relation to activities falling within a prescribed process which has ceased to be a prescribed process later than 1.12.1994, on the date on which that process ceased to be a prescribed process; for all remaining purposes on 16.12.1996) by virtue of 1993 c. 11, **s. 66(2)**; S.I. 1994/2854, **art. 2(1)**; S.I. 1996/3056, **art. 2**

[[F93]6 Nothing in section 55 shall be taken as extending to the enforcement of any of the provisions of the Alkali Act.**]**

Textual Amendments

F93 Sch. 3 ceased to have effect (in relation to activities falling within a prescribed process which has on 1.12.1994 ceased to be a prescribed process, on that date; in relation to activities falling within a prescribed process which has ceased to be a prescribed process later than 1.12.1994, on the date on which that process ceased to be a prescribed process; for all remaining purposes on 16.12.1996) by virtue of 1993 c. 11, **s. 66(2)**; S.I. 1994/2854, **art. 2(1)**; S.I. 1996/3056, **art. 2**

[[F94]PART II]

MODIFICATIONS OF THIS ACT

Textual Amendments

F94 Sch. 3 ceased to have effect (in relation to activities falling within a prescribed process which has on 1.12.1994 ceased to be a prescribed process, on that date; in relation to activities falling within a prescribed process which has ceased to be a prescribed process later than 1.12.1994, on the date on which that process ceased to be a prescribed process; for all remaining purposes on 16.12.1996) by virtue of 1993 c. 11, **s. 66(2)**; S.I. 1994/2854, **art. 2(1)**; S.I. 1996/3056, **art. 2**

[[F95]7 In section 31(4)—

(a) in paragraph (a), after "1990" there is inserted " or a work subject to the Alkali Act "; and

(b) for paragraph (b) there is substituted—

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"(b) of the inspectors appointed under Part I of the Environmental Protection Act 1990 or, as the case may be, under the Alkali Act, to enforce those provisions in relation to such furnaces;"**]**.

Textual Amendments

F95 Sch. 3 ceased to have effect (in relation to activities falling within a prescribed process which has on 1.12.1994 ceased to be a prescribed process, on that date; in relation to activities falling within a prescribed process which has ceased to be a prescribed process later than 1.12.1994, on the date on which that process ceased to be a prescribed process; for all remaining purposes on 16.12.1996) by virtue of 1993 c. 11, **s. 66(2)**; S.I. 1994/2854, **art. 2(1)**; S.I. 1996/3056, **art. 2**

[[F96]8 In section 33(1), after "1990" there is inserted " or the place at which he does so is a work registered in pursuance of section 9 of the Alkali, &c. Works Regulation Act 1906 ".**]**

Textual Amendments

F96 Sch. 3 ceased to have effect (in relation to activities falling within a prescribed process which has on 1.12.1994 ceased to be a prescribed process, on that date; in relation to activities falling within a prescribed process which has ceased to be a prescribed process later than 1.12.1994, on the date on which that process ceased to be a prescribed process; for all remaining purposes on 16.12.1996) by virtue of 1993 c. 11, **s. 66(2)**; S.I. 1994/2854, **art. 2(1)**; S.I. 1996/3056, **art. 2**

[[F97]9 In section 35(3), after "1990" there is inserted " or any work subject to the Alkali Act ".**]**

Textual Amendments

F97 Sch. 3 ceased to have effect (in relation to activities falling within a prescribed process which has on 1.12.1994 ceased to be a prescribed process, on that date; in relation to activities falling within a prescribed process which has ceased to be a prescribed process later than 1.12.1994, on the date on which that process ceased to be a prescribed process; for all remaining purposes on 16.12.1996) by virtue of 1993 c. 11, **s. 66(2)**; S.I. 1994/2854, **art. 2(1)**; S.I. 1996/3056, **art. 2**

[[F98]10 In section 36, after subsection (3) there is inserted—

"(3A) If the notice relates to a work subject to the Alkali Act, the person on whom the notice is served shall not be obliged to supply any information which, as certified by an inspector appointed under that Act, is not of a kind which is being supplied to the inspector for the purposes of that Act."**]**

Textual Amendments

F98 Sch. 3 ceased to have effect (in relation to activities falling within a prescribed process which has on 1.12.1994 ceased to be a prescribed process, on that date; in relation to activities falling within a prescribed process which has ceased to be a prescribed process later than 1.12.1994, on the date on which that process ceased to be a prescribed process; for all remaining purposes on 16.12.1996) by virtue of 1993 c. 11, **s. 66(2)**; S.I. 1994/2854, **art. 2(1)**; S.I. 1996/3056, **art. 2**

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[F99 11 At the end of section 40 there is inserted— " and "the Alkali Act" means the Alkali, &c. Works Regulation Act 1906 and "a work subject to the Alkali Act" means a work registered under section 9 of the Alkali Act, excluding the whole or part of such a work while the work or part is the subject of an order made or treated as made under paragraph 3 of Schedule 3 to this Act. "]

Textual Amendments

F99 Sch. 3 ceased to have effect (in relation to activities falling within a prescribed process which has on 1.12.1994 ceased to be a prescribed process, on that date; in relation to activities falling within a prescribed process which has ceased to be a prescribed process later than 1.12.1994, on the date on which that process ceased to be a prescribed process; for all remaining purposes on 16.12.1996) by virtue of 1993 c. 11, **s. 66(2)**; S.I. 1994/2854, **art. 2(1)**; S.I. 1996/3056, **art. 2**

SCHEDULE 4

Section 67(1).

CONSEQUENTIAL AMENDMENTS

The Health and Safety at Work etc. Act 1974 (c. 37)

1 Section 80(1) of the Health and Safety at Work etc. Act 1974 shall apply to provisions in this Act which re-enact provisions previously contained in an Act passed before or in the same Session as that Act as it applies to provisions so contained.

The Control of Pollution Act 1974 (c. 40)

2 In section 96(1) of the Control of Pollution Act 1974 after "pollution" there is inserted " other than air pollution ".

The Public Health (Control of Disease) Act 1984 (c. 22)

3 In section 7(4) of the Public Health (Control of Disease) Act 1984 for paragraph (e) there is substituted—

"(e) the Clean Air Act 1993;".

The Environmental Protection Act 1990 (c. 43)

4 In section 79(7) of the Environmental Protection Act 1990—

(a) for "the Clean Air Act 1956 or the Clean Air Act 1968" there is substituted " the Clean Air Act 1993 "; and

(b) for "section 34(2) of the Clean Air Act 1956" there is substituted " section 3 of the Clean Air Act 1993 ".

The Atomic Weapons Establishment Act 1991 (c. 46)

5 In the Schedule to the Atomic Weapons Establishment Act 1991 after paragraph 10A there is inserted—

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" Clean Air Act 1993

10B (1) Subsection (1) of section 46 of the Clean Air Act 1992 (Crown premises) shall have effect, in relation to emissions from designated premises, as if—

(a) references to premises under the control of a government department which are occupied for the public service of the Crown included a reference to designated premises; and

(b) references to the responsible Minister were references to the Secretary of State.

(2) For the purposes of section 36 of that Act (notices requiring information about air pollution), designated premises, and persons at such premises, shall be treated as premises used for, or persons in, the public service of the Crown.

(3) For all other purposes of that Act any such premises shall be treated as Crown premises occupied by a government department."

The Radioactive Substances Act 1993 (c. 12)

6 In Schedule 3 to the Radioactive Substances Act 1993—

(a) for paragraph 2 there is substituted—

"2 Section 16 of the Clean Air Act 1993."; and

(b) for paragraph 12 there is substituted—

"12 Sections 16 and 17 of the Clean Air Act 1993."

SCHEDULE 5

Section 67(2).

TRANSITIONAL PROVISIONS

PART I

GENERAL TRANSITIONAL PROVISIONS AND SAVINGS

Continuity of the law

1 The substitution of this Act for the enactments repealed by this Act does not affect the continuity of the law.

2 Any reference, whether express or implied, in this Act or any other enactment, instrument or document to a provision of this Act shall, so far as the context permits, be construed as including, in relation to the times, circumstances and purposes in relation to which the corresponding provision of the enactments repealed by this Act has effect, a reference to that corresponding provision.

3 Any document made, served or issued after the commencement of this Act which contains a reference to any of the enactments repealed by this Act shall be construed,

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except so far as a contrary intention appears, as referring or, as the case may require, including a reference to the corresponding provision of this Act.

4 Paragraphs 2 and 3 have effect without prejudice to the operation of sections 16 and 17 of the [M29]Interpretation Act 1978 (which relate to the effect of repeals).

Marginal Citations
M29 1978 c. 30.

General saving for old transitional provisions and savings

5 (1) The repeal by this Act of a transitional provision or saving relating to the coming into force of a provision reproduced in this Act does not affect the operation of the transitional provision or saving, in so far as it is not specifically reproduced in this Act but remains capable of having effect in relation to the corresponding provision of this Act.

(2) The repeal by this Act of an enactment previously repealed subject to savings does not affect the continued operation of those savings.

(3) The repeal by this Act of a saving on the previous repeal of an enactment does not affect the operation of the saving in so far as it is not specifically reproduced in this Act but remains capable of having effect.

PART II

EXCLUSION AND MODIFICATION OF CERTAIN PROVISIONS OF THIS ACT

Requirements to fit arrestment plant: sections 6 & 8

6 (1) Section 6(1) (arrestment plant for new non-domestic furnaces) does not apply to a furnace which was installed, the installation of which began or an agreement for the purchase or installation of which was entered into before 1st October 1969 (which was the day appointed for the coming into force of the enactments replaced by section 6).

(2) Subject to sub-paragraph (3), section 8(1) (arrestment plant for furnaces burning solid fuel in other cases) applies in relation to a furnace to which, by virtue of sub-paragraph (1), section 6 does not apply as it applies to a domestic furnace.

(3) Section 8(1) does not apply to a furnace which was installed, the installation of which began or an agreement for the purchase or installation of which was entered into—

(a) in relation to a furnace in England and Wales, before 1st June 1958 (which was the day appointed as respects England and Wales for the coming into force of the enactments replaced by section 8); and

(b) in relation to a furnace in Scotland, before 15th November 1958 (which was the day so appointed as respects Scotland).

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Height of chimneys for furnaces: section 14

7 (1) Subject to sub-paragraph (2) below, section 14 (height of chimneys for furnaces) does not apply to any furnace served by a chimney the construction of which was begun or the plans for which were passed before 1st April 1969 (which was the day appointed for the coming into force of the enactments replaced by section 14).

(2) Notwithstanding sub-paragraph (1), section 14 does apply to—

(a) any furnace the combustion space of which has been increased on or after 1st April 1969; or

(b) any furnace the installation of which was begun on or after that day and which replaces a furnace which had a smaller combustion space.

Smoke control orders

8 (1) In relation to any smoke control order made by a local authority under section 18 of this Act which revokes or varies an order made under section 11 of the [M30]Clean Air Act 1956 before 13th November 1980 (which was the date of the passing of the [M31]Local Government, Planning and Land Act 1980, which amended section 11 of that Act to omit the requirement that an order made by a local authority should be confirmed by the Secretary of State) the provisions of this Act mentioned in the following provisions of this paragraph shall have effect subject to the modifications there mentioned.

(2) In section 18—

(a) in subsection (1) after the word "order" where it first appears there shall be inserted the words " confirmed by the Secretary of State ";

(b) in subsection (3), after the word "order" where it first appears there shall be inserted the words " confirmed by the Secretary of State " and at the end there shall be inserted the words " so confirmed "; and

(c) in subsection (4), after the words "to the" there shall be inserted the words " confirmation and ".

(3) In section 26(1) and paragraph 1(1) of Schedule 2, for the word "making" there shall be substituted the word " confirmation ".

Marginal Citations

M30 1956 c. 52.

M31 1980 c. 65.

9 The provisions of Part III of this Schedule (which are derived from Schedule 1 to the Clean Air Act 1956 as that Schedule had effect immediately before the date mentioned in paragraph 8(1) of this Schedule) shall apply in substitution for Schedule 1 to this Act in relation to any such order; and references in this Act, as it applies in relation to any such order, to Schedule 1 to this Act or to any specified provision of that Schedule shall be read as referring to Part III of this Schedule or the corresponding provision of that Part (as the case may be).

Colliery spoilbanks: section 42

10 Subsections (2) to (4) of section 42 (colliery spoilbanks) shall not apply to any deposit of refuse deposited from a mine or quarry before 5th July 1956 (the date of

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the passing of the Clean Air Act 1956) if at that date the deposit was not longer in use as such and was not under the control of the owner of the mine or quarry.

PART III

CONFIRMATION AND COMING INTO OPERATION OF CERTAIN SMOKE CONTROL ORDERS

11 In this Part of this Schedule "order" means a smoke control order.

12 After making an order, the local authority shall publish in the London Gazette and also once at least in each of two successive weeks in some newspaper circulating in the area to which the order relates a notice—

(a) stating that the order has been made and its general effect;

(b) specifying a place in the district of the local authority where a copy of the order and of any map or plan referred to in the order may be inspected by any person free of charge at all reasonable times during a period of not less than six weeks from the date of the last publication of the notice; and

(c) stating that within that period any person who will be affected by the order may by notice in writing to the Secretary of State object to the confirmation of the order.

13 Besides publishing a notice as required by paragraph 12, the local authority who have made an order shall post, and keep posted throughout the period mentioned in that paragraph, copies of the notice in such number of conspicuous places within the area to which the order relates as appear to them necessary for the purpose of bringing the making of the order to the notice of persons affected.

14 If no objection is duly made to the Secretary of State within the period mentioned in paragraph 12(b), or if every objection so made is withdrawn, the Secretary of State may, if he thinks fit, confirm the order either with or without modifications.

15 In any case other than one within paragraph 14 the Secretary of State shall, before confirming the order, either—

(a) cause a local inquiry to be held; or

(b) afford to any person by whom an objection has been duly made in accordance with paragraph 12(c) and not withdrawn an opportunity of appearing before and being heard by a person appointed by him for the purpose;

and, after considering the objection and the report of the person who held the inquiry or the person so appointed, may confirm the order with or without modifications.

16 Section 250(2) to (5) of the [M32]Local Government Act 1972 (summoning of witnesses and production of documents before, and costs incurred at, local government inquiries held under that section) shall apply to an inquiry held under this Part of this Schedule by the Secretary of State as they apply to inquiries held under that section.

Marginal Citations

M32 1972 c. 70.

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17 Subject to paragraphs 18 and 19, an order when confirmed shall come into operation on such date as may be specified in the order, not being earlier than six months from the date of the confirmation.

18 An order varying a previous order so as to exempt specified buildings or classes of building or specified fireplaces or classes of fireplace from the operation of section 18 may come into operation on, or at any time after, the date of its confirmation.

19 (1) If, before the date on which an order is to come into operation, the local authority—

(a) pass a resolution postponing its operation; and

(b) publish a notice stating the effect of the resolution in the London Gazette and also once at least in each of two successive weeks in some newspaper circulating in the area to which the order relates;

the order shall, unless its coming into operation is again postponed under this paragraph, come into operation on the date specified in the resolution.

(2) A local authority shall not without the consent of the Secretary of State exercise their power under sub-paragraph (1) of postponing the coming into operation of an order for a period of more than twelve months or for periods amounting in all to more than twelve months.

20 In the application of this Part of this Schedule to Scotland, for any reference to the London Gazette there shall be substituted a reference to the Edinburgh Gazette.

SCHEDULE 6

Section 67(3).

REPEALS

Chapter	Short title	Extent of repeal
4 & 5 Eliz. 2 c. 52.	The Clean Air Act 1956.	The whole Act.
1963 c. 33.	The London Government Act 1963.	Section 40(4)(e).In Schedule 11, paragraphs 30 and 31.
1964 c. 56.	The Housing Act 1964.	Section 95.
1968 c. 62.	The Clean Air Act 1968.	The whole Act.
1970 c. 38.	The Building (Scotland) Act 1970.	In Schedule 1, paragraph 5.
1972 c. 70.	The Local Government Act 1972.	Section 180(3)(f).
1973 c. 65.	The Local Government (Scotland) Act 1973.	In Schedule 15, paragraph 28.In Schedule 27, paragraph 128.
1974 c. 39.	The Consumer Credit Act 1974.	In Schedule 4, paragraphs 15 and 16.
1974 c. 40.	The Control of Pollution Act 1974.	Sections 75 to 84.Section 103.In section 109(3),

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		the words "75, 77".In Schedule 2, paragraphs 19, 26 and 27.In Schedule 3, paragraph 16.
1980 c. 65.	The Local Government, Planning and Land Act 1980.	Section 189.In Schedule 2, paragraphs 1 to 6 and 16.
1984 c. 55.	The Building Act 1984.	In Schedule 5, paragraph 2.In Schedule 6, paragraph 5.
1987 c. 26.	The Housing (Scotland) Act 1987.	In Schedule 23, paragraphs 6 and 14.
1989 c. 17.	The Control of Smoke Pollution Act 1989.	The whole Act.
1990 c. 43.	The Environmental Protection Act 1990.	Section 85.In Schedule 15, paragraphs 6, 7, 12 and 15(6) to (9).
1991 c. 46.	The Atomic Weapons Establishment Act 1991.	In the Schedule, paragraphs 4 and 8(1).

TABLE OF DERIVATIONS

Notes:

1. The following abbreviations are used in this Table:—

1897	= The Public Health (Scotland) Act 1897 (c. 38)
1936	= The Public Health Act 1936 (c. 49)
1956	= The Clean Air Act 1956 (c. 52)
1961	= The Public Health Act 1961 (c. 64)
1963	= The London Government Act 1963 (c. 33)
1964	= The Housing Act 1964 (c. 56)
1968	= The Clean Air Act 1968 (c. 62)
1970 c. 38	= The Building (Scotland) Act 1970 (c. 38)
1972 c. 70	= The Local Government Act 1972 (c. 70)
1973 c. 65	= The Local Government (Scotland) Act 1973 (c. 65)
1974	= The Control of Pollution Act 1974 (c. 40)
1974 c. 39	= The Consumer Credit Act 1974 (c. 39)
1975 c. 21	= The Criminal Procedure (Scotland) Act 1975 (c. 21)
1980	= The Local Government, Planning and Land Act 1980 (c. 65)

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1980 c. 43	= The Magistrates' Courts Act 1980 (c. 43)
1984 c. 55	= The Building Act 1984 (c. 55)
1987 c. 26	= The Housing (Scotland) Act 1987 (c. 26)
1989	= The Control of Smoke Pollution Act 1989 (c. 17)
1989 c. 29	= The Electricity Act 1989 (c. 29)
1990	= The Environmental Protection Act 1990 (c. 43)
S.I. 1974/2170	= The Clean Air Enactments (Repeals and Modifications) Regulations 1974 (S.I. 1974/2170)
S.I. 1992/36	= The Clean Air (Units of Measurement) Regulations 1992 (S.I. 1992/36)
R (followed by a number)	= The recommendation set out in the paragraph of that number in the Appendix to the Report of the Law Commission and the Scottish Law Commission (Cm 2085).

2. Certain functions of the Minister of Housing and Local Government were transferred to the Secretary of State for Wales by the Secretary of State for Wales and Minister of Land and Natural Resources Order 1965 (S.I. 1965/319, Article 2(1), Schedule 1) and the remaining functions of that Minister were transferred to the Secretary of State by the Secretary of State for the Environment Order 1970 (S.I. 1970/1681, Article 2(1)). References to "the Minister" and "the appropriate Minister" in the Clean Air Acts 1956 and 1968 are therefore reproduced in the Bill as references to the Secretary of State.

3. Fines for summary offences under the enactments being consolidated (other than fines relating to continuing offences) were increased by the Criminal Justice Act 1982 (c. 48) section 38(6), (8) and (9) and section 289F of the Criminal Procedure (Scotland) Act 1975 (c. 21). In relation to summary offences all references in the enactments being consolidated to fines of specified amounts (other than those relating to continuing offences) were converted by section 46(1) of the Criminal Justice Act 1982 and section 289G(4) of the Criminal Procedure (Scotland) Act 1975 to references to fines at the corresponding level on the standard scale of fines for summary offences introduced by section 37 of the Criminal Justice Act 1982 and section 289G of the Criminal Procedure (Scotland) Act 1975. All references in the Bill to a fine of a specified level on the standard scale are derived from the operation of the enactments mentioned above.

Provision	Derivation
1(1)	1956 ss. 1(1).
(2)	1956 s. 1 (4).
(3)	1956 s. 1(2).
(4)	1956 s. 1(3).
(5)	1956 s. 27(1); 1974, Sch. 2 para. 19(1).
(6)	1956 s. 1(1).
2(1)	1968 s. 1(1); 1989 s. 2(1).

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(2)	1968 s. 1(2), (3).
(3)	1968 s. 1(1A); 1989 s. 2(2).
(4)	1968 s. 1(4).
(5)	1968 s. 1(1); 1974, Sch. 2 para. 26(a);
(6)	1968 s. 1(5).
(7)	1968 Sch. 1 para 9.
3	1956 s. 34(2); 1968 Sch. 1 para. 11.
4(1)	1956 s. 3(3).
(2)	1956 s. 3(1).
(3)	1956 s. 3(2).
(4)	1956 ss. 3(1), (3), 27(2), (4); 1974, Sch. 2 para. 19(2), (4); R1.
(5), (6)	1956 s. 3(4), (5).
5(1)	1968 s. 2(5).
(2)	1968 s. 2(1).
(3)	1968 s. 2(2).
(4)	1968 s. 2(3).
(5)	1968 s. 2(4).
(6)	1968 s. 2(2), (4); 1974, Sch. 2 para. 26(b), (c).
6(1), (2)	1968 s. 3(1); S.I. 1992/36 reg. 3(3), (4).
(3)	1968 s. 3(2).
(4)	1968 s. 3(4).
(5)	1968 s. 3(3); 1974, Sch. 2, para. 26(d).
7(1), (2)	1968 s. 4(1), (2).
(3)—(5)	1968 s. 4(4)—(6).
(6)	1968 s. 4(7); 1974 Sch. 2 para. 26(e).
8(1)	1956 s. 6(1); 1968 s. 3(5): S.I. 1992/36 reg. 2(3).
(2)	1956 ss. 6(1), 27(4); 1974 Sch 2 para 19(4); R1.
9(1)	1968 s. 3(6).
(2)	1956 s. 6(4); 1968 s. 3(5), (7).
(3)	1956 s. 6(5); 1968 s. 3(5).
10(1)	1956 s. 7(1); 1968 s. 5(1); S.I. 1992/36 reg. 2(4), (5).
(2)	1956 s. 7(2), (3); 1968 Sch. 1 para. 2.

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(3)	1956 s. 27(4).
(4)	1968 s. 5(7).
(5)	1968 s. 5(2).
(6)	1956 s. 7(1) proviso.
11	1968 s. 5(3)—(6); S.I. 1992/36 reg. 3(5), (6).
12(1)	1956 s. 8(1); 1968 Sch. 1 para. 3.
(2)	1956 ss. 8(2), 27(4); 1974 Sch. 2 para. 19(4).
13	1956 s. 9; 1968 Sch. 1 para. 4; R2.
14(1)	1968 s. 6(10).
(2)	1968 s. 6(1).
(3)	1968 s. 6(1)
(4)	1968 s. 6(2).
(5)	1968 s. 6(2).
(6)	1968 s. 6(1), (2); 1974 Sch. 2 para. 26(f).
(7)	1968 s. 6(11).
15(1)	
(2)—(4)	1968 s. 6(4)—(6).
(5), (6)	1968 s. 6(7).
(7), (8)	1968 s. 6(8), (9).
(9)	1968 s. 6(11).
16(1)	1956 s. 10(1); 1961 Sch. 1 Pt III; 1963 Sch. 11 Part I para. 31; 1968 s. 6(12).
(2)	1956 s. 10(1).
(3)	1956 s. 10(2), (3); 1984 c. 55 Sch. 6 para. 5.
(4)	1956 s. 10(3).
(5)	1956 s. 10(5); 1970 c. 38 Sch. 1 Pt II para. 5; 1973 c. 65 Sch. 15 para. 28.
17	1956 s. 16(1), (3); 1968 Sch. 1 para 5; 1989 s. 1.
18(1)	1956 s. 11(1).
(2)	1956 ss. 11(3), 11(10) proviso.
(3), (4)	1956 s. 11(5), (6).
19	1968 s. 8(1) to (6).
20(1)	1956 ss. 11(2).
(2)	1956 s. 11(10).
(3)(a)	1956 s. 11(2).

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(3)(b)	drafting.
(4)	1956 s. 11(2) proviso.
(5)	1956 s.27(2); 1974 Sch. 2 para. 19(2).
(6)	1956 s. 34(1).
21	1956 s. 11(4).
22(1)	1956 s. 11(7).
(2)	1956 s. 11(7) proviso.
(3)	1956 s. 11(9).
23(1), (2)	1968 s. 9(1), (2); 1974 Sch. 2 para. 27.
(3)—(5)	1968 s. 9(3)—(5).
24(1)—(3)	1956 s. 12(2).
(4)	1956 s. 12(3); 1987 c. 26 Sch. 23 para. 6(1).
25(1)	drafting.
(2)	1964 ss.95(1), 108(4).
26	1956 s. 15(1), (2); 1980 Sch. 2 para. 2.
27(1)	1956 s. 14(1); 1964 s. 95(9).
(2)	1964 s. 95(9).
(3)	1956 s. 14(1) proviso.
(4)	1956 s. 15(3).
28(1)	1956 s. 14(2).
(2)	1956 s. 14(2); 1974 c. 39 Sch. 4 Part I para. 15.
(3)	1956 s. 15(3).
29	1956 s. 34(1); 1974 c. 39 Sch. 4 Part I para. 16.
30	1974 s. 75; The Departments (Northern Ireland) Order 1982 (S. I. 1982/846 (N. I. 11)).
31	1974 s. 76; 1990 Sch. 15 para. 15(6).
32(1)	1974 ss. 75(3)(b), 76(3)(c).
(2)—(4)	1974 s. 77; 1975 c. 21 s. 289B(1); 1980 c. 43 s. 32(2).
33	1974 s. 78; S.I. 1974/2170 reg. 10; 1990 Sch. 15 para. 15(7).
34(1)	1956 s. 25; 1974 s. 79(1).
(2)—(4)	1974 s. 79(5)—(7).

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35(1)—(3)	1974 ss. 79(2)—(4), 84(1) (definition of "private dwelling"), 105(1) (definition of "notice"); 1990 Sch. 15 para. 15(8).
(4), (5)	1974 s. 79(8).
(6)	1974 s. 79(9).
36	1974 ss. 80, 84(1) (definition of "private dwelling"), 105(1) (definitions of "notice" and "regulations"); 1990 Sch. 15 para. 15(9).
37	1974 s. 81.
38	1974 s. 82.
39	1974 s. 83.
40(a), (b)	1974 s. 84(2), (3).
41	1956 s. 16A; 1968 s. 11A; 1990 Sch. 15 paras. 6, 12.
42(1), (2)	1956 s. 18(1).
(3)	1956 ss. 18(1), 27(4) proviso; 1974 Sch. 2 para. 19(4).
(4)	1956 s. 18(2); 1968 Sch. 1 para. 1; 1990 Sch. 15 para. 7(1).
(5)	1956 s. 18(5); 1990 Sch. 15 para. 7(2).
(6)	1956 s. 18(4).
43(1), (2)	1956 s. 19(1).
(3)	1956 s. 19(2).
(4)	1956 s. 27(4); 1974 Sch. 2 para. 19(3).
(5)	1956 s. 19(3); 1968 Sch. 1 para. 1.
44(1), (2)	1956 s.20(1); 27(1)
(3)	1956 s. 20(2).
(4), (5)	1956 s. 20(3).
(6)	1956 s. 20(4); 1968 Sch. 1 para. 1.
45(1)	1956 s. 21(1); 1968 Sch. 1 para. 6.; 1990 Sch. 15 para. 7(3).
(2)	1956 s. 21(2).
46	1956 s. 22; Defence (Transfer of Functions) (No.1) Order 1964 (S.I. 1964/488) Sch. 1 Part I; 1968 Sch. 1, para. 1.
47	1968 ss. 7, 7A; 1990 s. 85.
48	1974 s. 102(1).
49	1956 ss. 26, 27(3); 1968 Sch. 1 para. 1; 1974 s. 94, Sch. 2 para. 19(3); R3.

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50(1)	1956 s. 27(4); 1974 Sch. 2 para. 19(4).
(2)	1956 s. 27(4) proviso; 1974, Sch.2, para.19(4).
(3)	1936 s. 297; 1956 s. 31, Sch. 3 para. 2.
51(1), (2)	1956 s. 30(1); 1968 Sch. 1 para. 9; 1974 Sch.3 para. 16(1).
(3)	1956 s.30(2); 1968, Sch.1, para.9; 1974, Sch.3, para.16(2).
52	1974 s. 87(1); R4.
53	1974 s. 87(2); R4.
54	1956 s. 28; 1968 Sch. 1 para. 1.
55(1)	1956 s. 29(1); 1961 Sch. 1 Part III; 1968 Sch. 1 para. 1; R5.
(2)	1956 s. 29(2); 1968 Sch. 1 para. 8.
(3)	1956 s. 29(3); 1968 Sch. 1 para. 1.
56	1897 s. 18; 1936 s. 287; 1956 s. 31(1), Sch. 3 para. 1, Part III; 1974 s. 91; R6.
57	1897 s. 18; 1936 ss. 287(3), 288; 1956 s. 31(1); 1974 s. 92; R6.
58	1974 s. 93.
59	1936 s. 318; 1956 s. 31(1); 1974 s. 96; R7.
60	1936 ss. 322, 324, 325; 1956 s. 31(1); 1968 s. 8(7); 1974 s. 97; R8.
61	1956 s. 31(1), (3), (4), (6); 1968 Sch. 1 para. 1; R9.
62(1)	1956 s. 31(1); 1968 Sch. 1 para. 1.
(2)	1956 s. 31(7), Sch. 3 Part III; 1968 Sch. 1 para. 1; 1987 c. 26 Sch. 23 para. 6(2), (3).
63(1)	1956 s. 33(1); 1968 s. 12(1); R10.
(2)	1956 s. 33(1); 1968 s. 12(2).
(3)	1956 s. 33(1).
64(1)	1936 s. 343(1); 1956 ss. 31(1), 34(1); 1961 Sch. 1 Part III; 1968 s. 13(1), Sch. 1 para. 10; 1972 c. 70 s. 180(1), (3)(f); 1973 c. 65 Sch. 27 Part II para. 128; 1974 s. 84(1); S.I. 1992/36 regs. 2(2), 3(2); R11.
(2)	1956 s. 34(3).
(3)	1968 s. 13(2).
(4)	1956 s. 34(4); 1974 ss. 30(1), 84(1), R12.

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(5)	1956 s. 34(6).
(6)	1956 s. 34(7); 1968 Sch. 1 para. 12.
65	1974 s. 107.
66	1956 s. 17.
67	
68(1), (2)	
(3)	1956 s. 36; 1968 s. 15(6).
Sch. 1	1956 Sch. 1; 1980 Sch. 2, para. 5.
Sch. 2 para. 1(1)—(4)	1956 s. 12(1); 1980 Sch. 2, para. 2.
(5), (6)	1964 ss. 95(4)(a), 108(4).
para. 2	1964 s. 95(2).
para. 3(1), (2)	1964 s. 95(2); 1968 s. 10(5).
(3)	1964 s. 95(3), (10)(b).
(4)	1964 s. 95(4)(b).
(5)	1964 s. 95(2), (3).
para. 4(1)	1956 s.13(1).
(2)	1956 s. 13(2); 1964 s. 95(7), (8).
(3)	1964 s. 95(7).
Sch. 3 Part I	
para. 1	1968 s. 11(6), (7).
paras. 2, 3	1968 s. 11(1), (3).
para. 4	1968 s. 11(3).
para. 5	1968 s. 11(4).
para. 6	1956 s. 29(1), proviso para. (a).
Part II	
para. 7	1974 s. 76(4)(a).
para. 8	1974 s. 78(1).
para. 9	1974 s. 79(4).
para. 10	1974 s. 80(3).
para. 11	1974 s. 84(1).
Sch. 4	
Sch. 5 Part I paras. 1-5	
Part II para. 6(1)	1968 s. 3(4); Clean Air Act 1968 (Commencement No. 2) Order 1969 (S.I. 1969/995); Clean Air Act 1968

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	(Commencement No. 2)(Scotland) Order 1969 (S.I. 1969/1006).
(2), (3)	1956 s. 6(2); Clean Air Act 1956 (Appointed Day) Order 1958 (S.I. 1958/167); Clean Air Act 1956 (Appointed Day No. 2) (Scotland) Order 1958 (S.I. 1958/1931).
para. 7	1968 s. 6(10); Clean Air Act 1968 (Commencement No. 1) Order 1968 (S.I. 1968/1922); Clean Air Act 1968 (Commencement No. 1)(Scotland) Order 1968 (S.I. 1968/1941).
paras. 8, 9	1980 Sch. 2 paras. 2(b) and 5(b).
para. 10	1956 s. 18(3).
Part III	1956 Sch. 1 as originally enacted; 1968 s. 10(1), (2), (4).
Sch. 6	

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