



Clean Air Act 1993

1993 CHAPTER 11

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—

Status: Point in time view as at 01/04/2015.

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- (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.
- (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 [^{F1}process subject to Part I of the Environmental Protection Act 1990 [^{F2}or] activity subject to regulations under section 2 of the Pollution Prevention and Control Act 1999][^{F3}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.

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

Textual Amendments

- F1** 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)
- F2** 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](#)
- F3** 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.

[^{F4}(2A) If the notice relates to an installation subject to regulations made under section 2 of the Pollution Prevention and Control Act 1999 [^{F5}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.]

[^{F6}(2A) If the notice relates to an installation subject to regulation by the [^{F7}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 [^{F7}appropriate agency], is not of a kind which is being supplied to the [^{F7}appropriate agency] for the purposes of those regulations.]

[^{F8}(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.

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- (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 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

- F4** S. 36(2A) inserted (S.) (28.9.2000) by [S.I. 2000/323](#), reg. 36, **Sch. 10 para. 4(3)**
- F5** 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.
- F6** S. 36(2A) inserted (E.W.) (1.8.2000) by [S.I. 2000/1973](#), reg. 39, **Sch. 10 para. 12**
- F7** 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)
- F8** 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)

- C1** 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.

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- (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;
 - (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

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- (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
 - (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—

[^{F9}(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.

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Textual Amendments

- F9** 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)

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