



# Clean Air Act 1993

## 1993 CHAPTER 11

### PART VII

#### MISCELLANEOUS AND GENERAL

##### *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, 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.
- (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.

#### **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—

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*Status: Point in time view as at 28/07/1995.*

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- (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); or
  - (b) in Scotland, a nuisance to which section 17 (smoke nuisances) applies exists or has existed,

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.

- (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.

## **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.

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### **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 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—

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- (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
  - (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”.

**Modifications etc. (not altering text)**

C1 S. 56 applied (with modifications) (1.10.1994) by S.I. 1994/2249, reg. 3(4)

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## 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.
- (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)

C2 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 IV or V of this Act (or by this Part of this Act so far as relating to those Parts).

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- (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.

**Modifications etc. (not altering text)**

C3 S. 58 applied (with modifications) (1.10.1994) by S.I. 1994/2249, reg. 3(4)

**59 [F<sup>1</sup> Inquiries].**

- (1) The Secretary of State may cause [F<sup>2</sup>an inquiry] to be held in any case in which he considers it appropriate for [F<sup>3</sup> 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 <sup>M1</sup>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 <sup>M2</sup>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**

- F1** 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**
- F2** 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**
- F3** 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**

- M1** 1972 c. 70.  
**M2** 1973 c. 65.

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## 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;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.

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#### Extent Information

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

## 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);



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- (b) to submit proposals to the <sup>F5</sup>SEPA] in pursuance of a direction under subsection (1) of section 19 (<sup>F5</sup>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.

#### Extent Information

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

#### Textual Amendments

- F5** 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 <sup>M3</sup>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.
- (2) Section 172 of the <sup>M4</sup>Public Health (Scotland) Act 1897 (constitution of port health authorities) shall have effect as if the provisions of this Act were provisions of that Act.
- (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 port health authority or joint board has functions, rights or liabilities under this Act—
- (a) any reference in this Act to a local authority or its district includes, in relation to those functions, rights or liabilities, a reference to the port health authority or board or its district;
  - (b) for the purposes of this Act, no part of the district of any such port health authority or board is to be treated, in relation to any matter falling within the competence of the authority or board, as forming part of the district of any other authority.

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- (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.

#### Marginal Citations

M3 1936 c. 49.

M4 1897 c. 38.

## 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 <sup>M5</sup>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);

<sup>F4</sup> . . .

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 <sup>M6</sup>Public Health (Scotland) Act 1897, section 161 (joint owners) and section 164 (compensation); and

- (ii) in the <sup>M7</sup>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

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- documents), section 329 (default powers), section 330 (form of notices) and section 336 (limitation on liability of trustee);
- (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 <sup>M8</sup>Housing (Scotland) Act 1966 shall apply to section 329 as they originally applied to the provisions which it re-enacted;
  - (c) section 109 of the Housing (Scotland) Act 1987 (recovery by local authority of expenses) shall have effect as if the reference to section 108(3) of that Act included a reference to paragraph 1 of Schedule 2 to this Act; 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

**F4** Words in s. 62(1) repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. I** Group4

#### Marginal Citations

**M5** 1936 c. 49.

**M6** 1897 c. 38.

**M7** 1987 c. 26.

**M8** 1966 c. 49.

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