



Health and Safety at Work etc. Act 1974

1974 CHAPTER 37

PART I

HEALTH, SAFETY AND WELFARE IN CONNECTION WITH WORK, AND CONTROL OF DANGEROUS SUBSTANCES AND CERTAIN EMISSIONS INTO THE ATMOSPHERE

Miscellaneous and supplementary

44 Appeals in connection with licensing provisions in the relevant statutory provisions

- (1) Any person who is aggrieved by a decision of an authority having power to issue licences (other than agricultural licences and nuclear site licences) under any of the relevant statutory provisions—
 - (a) refusing to issue him a licence, to renew a licence held by him, or to transfer to him a licence held by another;
 - (b) issuing him a licence on or subject to any term, condition or restriction whereby he is aggrieved ;
 - (c) varying or refusing to vary any term, condition or restriction on or subject to which a licence is held by him; or
 - (d) revoking a licence held by him,may appeal to the Secretary of State.
- (2) The Secretary of State may, in such cases as he considers it appropriate to do so, having regard to the nature of the questions which appear to him to arise, direct that an appeal under this section shall be determined on his behalf by a person appointed by him for that purpose.
- (3) Before the determination of an appeal the Secretary of State shall ask the appellant and the authority against whose decision the appeal is brought whether they wish to appear and be heard on the appeal and—
 - (a) the appeal may be determined without a hearing of the parties if both of them express a wish not to appear and be heard as aforesaid ;

- (b) the Secretary of State shall, if either of the parties expresses a wish to appear and be heard, afford to both of them an opportunity of so doing.
- (4) The Tribunals and Inquiries Act 1971 shall apply to a hearing held by a person appointed in pursuance of subsection (2) above to determine an appeal as it applies to a statutory inquiry held by the Secretary of State, but as if in section 12(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State included a reference to a decision taken on his behalf by that person.
- (5) A person who determines an appeal under this section on behalf of the Secretary of State and the Secretary of State, if he determines such an appeal, may give such directions as he considers appropriate to give effect to his determination.
- (6) The Secretary of State may pay to any person appointed to hear or determine an appeal under this section on his behalf such remuneration and allowances as the Secretary of State may with the approval of the Minister for the Civil Service determine.
- (7) In this section—
- (a) "licence" means a licence under any of the relevant statutory provisions other than an agricultural licence or nuclear site licence ;
 - (b) "nuclear site licence" means a licence to use a site for the purpose of installing or operating a nuclear installation within the meaning of the following subsection.
- (8) For the purposes of the preceding subsection "nuclear installation" means—
- (a) a nuclear reactor (other than such a reactor comprised in a means of transport, whether by land, water or air); or
 - (b) any other installation of such class or description as may be prescribed for the purposes of this paragraph or section 1(1)(b) of the Nuclear Installations Act 1965, being an installation designed or adapted for—
 - (i) the production or use of atomic energy ; or
 - (ii) the carrying out of any process which is preparatory or ancillary to the production or use of atomic energy and which involves or is capable of causing the emission of ionising radiations; or
 - (iii) the storage, processing or disposal of nuclear fuel or of bulk quantities of other radioactive matter, being matter which has been produced or irradiated in the course of the production or use of nuclear fuel;
- and in this subsection—
- "atomic energy" has the meaning assigned by the Atomic Energy Act 1946 ;
 - "nuclear reactor" means any plant (including any machinery, equipment or appliance, whether affixed to land or not) designed or adapted for the production of atomic energy by a fission process in which a controlled chain reaction can be maintained without an additional source of neutrons.

45 Default powers

- (1) Where, in the case of a local authority who are an enforcing authority, the Commission is of the opinion that an investigation should be made as to whether that local authority have failed to perform any of their enforcement functions, the Commission may make a report to the Secretary of State.

- (2) The Secretary of State may, after considering a report submitted to him under the preceding subsection, cause a local inquiry to be held; and the provisions of subsections (2) to (5) of section 250 of the Local Government Act 1972 as to local inquiries shall, without prejudice to the generality of subsection (1) of that section, apply to a local inquiry so held as they apply to a local inquiry held in pursuance of that section.
- (3) If the Secretary of State is satisfied, after having caused a local inquiry to be held into the matter, that a local authority have failed to perform any of their enforcement functions, he may make an order declaring the authority to be in default.
- (4) An order made by virtue of the preceding subsection which declares an authority to be in default may, for the purpose of remedying the default, direct the authority (hereafter in this section referred to as " the defaulting authority ") to perform such of their enforcement functions as are specified in the order in such manner as may be so specified and may specify the time or times within which those functions are to be performed by the authority.
- (5) If the defaulting authority fail to comply with any direction contained in such an order the Secretary of State may, instead of enforcing the order by mandamus, make an order transferring to the Executive such of the enforcement functions of the defaulting authority as he thinks fit.
- (6) Where any enforcement functions of the defaulting authority are transferred in pursuance of the preceding subsection, the amount of any expenses which the Executive certifies were incurred by it in performing those functions shall on demand be paid to it by the defaulting authority.
- (7) Any expenses which in pursuance of the preceding subsection are required to be paid by the defaulting authority in respect of any enforcement functions transferred in pursuance of this section shall be defrayed by the authority in the like manner, and shall be debited to the like account, as if the enforcement functions had not been transferred and the expenses had been incurred by the authority in performing them.
- (8) Where the defaulting authority are required to defray any such expenses the authority shall have the like powers for the purpose of raising the money for defraying those expenses as they would have had for the purpose of raising money required for defraying expenses incurred for the purpose of the enforcement functions in question.
- (9) An order transferring any enforcement functions of the defaulting authority in pursuance of subsection (5) above may provide for the transfer to the Executive of such of the rights, liabilities and obligations of the authority as the Secretary of State considers appropriate ; and where such an order is revoked the Secretary of State may, by the revoking order or a subsequent order, make such provision as he considers appropriate with respect to any rights, liabilities and obligations held by the Executive for the purposes of the transferred enforcement functions.
- (10) The Secretary of State may by order vary or revoke any order previously made by him in pursuance of this section.
- (11) In this section "enforcement functions", in relation to a local authority, means the functions of the authority as an enforcing authority.
- (12) In the application of this section to Scotland—

- (a) in subsection (2) for the words " subsections (2) to (5) of section 250 of the Local Government Act 1972 " there shall be substituted the words " subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 ", except that before 16th May 1975 for the said words there shall be substituted the words " subsections (2) to (9) of section 355 of the Local Government (Scotland) Act 1947 ";
- (b) in subsection (5) the words "instead of enforcing the order by mandamus " shall be omitted.

46 Service of notices

- (1) Any notice required or authorised by any of the relevant statutory provisions to be served on or given to an inspector may be served or given by delivering it to him or by leaving it at, or sending it by post to, his office.
- (2) Any such notice required or authorised to be served on or given to a person other than an inspector may be served or given by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.
- (3) Any such notice may—
 - (a) in the case of a body corporate, be served on or given to the secretary or clerk of that body;
 - (b) in the case of a partnership, be served on or given to a partner or a person having the control or management of the partnership business or, in Scotland, the firm.
- (4) For the purposes of this section and of section 26 of the Interpretation Act 1889 (service of documents by post) in its application to this section, the proper address of any person on or to whom any such notice is to be served or given shall be his last known address, except that—
 - (a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body;
 - (b) in the case of a partnership or a person having the control or the management of the partnership business, it shall be the principal office of the partnership;
 and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be their principal office within the United Kingdom.
- (5) If the person to be served with or given any such notice has specified an address within the United Kingdom other than his proper address within the meaning of subsection (4) above as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address shall also be treated for the purposes of this section and section 26 of the Interpretation Act 1889 as his proper address.
- (6) Without prejudice to any other provision of this section, any such notice required or authorised to be served on or given to the owner or occupier of any premises (whether a body corporate or not) may be served or given by sending it by post to him at those premises, or by addressing it by name to the person on or to whom it is to be served or given and delivering it to some responsible person who is or appears to be resident or employed in the premises.
- (7) If the name or the address of any owner or occupier of premises on or to whom any such notice as aforesaid is to be served or given cannot after reasonable inquiry be

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ascertained, the notice may be served or given by addressing it to the person on or to whom it is to be served or given by the description of "owner" or "occupier" of the premises (describing them) to which the notice relates, and by delivering it to some responsible person who is or appears to be resident or employed in the premises, or, if there is no such person to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.

- (8) The preceding provisions of this section shall apply to the sending or giving of a document as they apply to the giving of a notice.

47 Civil liability

- (1) Nothing in this Part shall be construed—
- (a) as conferring a right of action in any civil proceedings in respect of any failure to comply with any duty imposed by sections 2 to 7 or any contravention of section 8; or
 - (b) as affecting the extent (if any) to which breach of a duty imposed by any of the existing statutory provisions is actionable; or
 - (c) as affecting the operation of section 12 of the Nuclear Installations Act 1965 (right to compensation by virtue of certain provisions of that Act).
- (2) Breach of a duty imposed by health and safety regulations or agricultural health and safety regulations shall, so far as it causes damage, be actionable except in so far as the regulations provide otherwise.
- (3) No provision made by virtue of section 15(6)(b) shall afford a defence in any civil proceedings, whether brought by virtue of subsection (2) above or not; but as regards any duty imposed as mentioned in subsection (2) above health and safety regulations or, as the case may be, agricultural health and safety regulations may provide for any defence specified in the regulations to be available in any action for breach of that duty.
- (4) Subsections (1)(a) and (2) above are without prejudice to any right of action which exists apart from the provisions of this Act, and subsection (3) above is without prejudice to any defence which may be available apart from the provisions of the regulations there mentioned.
- (5) Any term of an agreement which purports to exclude or restrict the operation of subsection (2) above, or any liability arising by virtue of that subsection shall be void, except in so far as health and safety regulations or, as the case may be, agricultural health and safety regulations provide otherwise.
- (6) In this section "damage" includes the death of, or injury to, any person (including any disease and any impairment of a person's physical or mental condition).

48 Application to Crown

- (1) Subject to the provisions of this section, the provisions of this Part, except sections 21 to 25 and 33 to 42, and of regulations made under this Part shall bind the Crown.
- (2) Although they do not bind the Crown, sections 33 to 42 shall apply to persons in the public service of the Crown as they apply to other persons.
- (3) For the purposes of this Part and regulations made thereunder persons in the service of the Crown shall be treated as employees of the Crown whether or not they would be so treated apart from this subsection.

- (4) Without prejudice to section 15(5), the Secretary of State may, to the extent that it appears to him requisite or expedient to do so in the interests of the safety of the State or the safe custody of persons lawfully detained, by order exempt the Crown either generally or in particular respects from all or any of the provisions of this Part which would, by virtue of subsection (1) above, bind the Crown.
- (5) The power to make orders under this section shall be exercisable by statutory instrument, and any such order may be varied or revoked by a subsequent order.
- (6) Nothing in this section shall authorise proceedings to be brought against Her Majesty in her private capacity, and this subsection shall be construed as if section 38(3) of the Crown Proceedings Act 1947 (interpretation of references in that Act to Her Majesty in her private capacity) were contained in this Act.

49 Adaptation of enactments to metric units or appropriate metric units

- (1) The appropriate Minister may by regulations amend—
 - (a) any of the relevant statutory provisions ; or
 - (b) any provision of an enactment which relates to any matter relevant to any of the general purposes of this Part but is not among the relevant statutory provisions ; or
 - (c) any provision of an instrument made or having effect under any such enactment as is mentioned in the preceding paragraph,
 by substituting an amount or quantity expressed in metric units for an amount or quantity not so expressed or by substituting an amount or quantity expressed in metric units of a description specified in the regulations for an amount or quantity expressed in metric units of a different description.
- (2) The amendments shall be such as to preserve the effect of the provisions mentioned except to such extent as in the opinion of the appropriate Minister is necessary to obtain amounts expressed in convenient and suitable terms.
- (3) Regulations made by the appropriate Minister under this subsection may, in the case of a provision which falls within any of paragraphs (a) to (c) of subsection (1) above and contains words which refer to units other than metric units, repeal those words if the appropriate Minister is of the opinion that those words could be omitted without altering the effect of that provision.
- (4) In this section the appropriate Minister means—
 - (a) in relation to any provision not relating exclusively to agricultural operations the Secretary of State ;
 - (b) in relation to any provision relating exclusively to the relevant agricultural purposes that applies to Great Britain or the United Kingdom the Agriculture Ministers;
 - (c) in relation to any provision so relating that applies to England and Wales only, the Minister of Agriculture, Fisheries and Food;
 - (d) in relation to any provision so relating that applies to Scotland only, the Secretary of State.

50 Regulations under relevant statutory provisions

- (1) Subject to subsection (5) below any power to make regulations conferred on the Secretary of State by any of the relevant statutory provisions may be exercised by him either so as to give effect (with or without modifications) to proposals for the making of regulations by him under that power submitted to him by the Commission or independently of any such proposals, but before making any regulations under any of those provisions independently of any such proposals the Secretary of State shall consult the Commission and such other bodies as appear to him to be appropriate.
- (2) Where the Secretary of State proposes to exercise any such power as is mentioned in the preceding subsection so as to give effect to any such proposals as are there mentioned with modifications, he shall, before making the regulations, consult the Commission.
- (3) Where the Commission proposes to submit to the Secretary of State any such proposals as are mentioned in subsection (1) above except proposals for the making of regulations under section 43(2), it shall, before so submitting them, consult—
 - (a) any government department or other body that appears to the Commission to be appropriate (and, in particular, in the case of proposals for the making of regulations under section 18(2), any body representing local authorities that so appears, and, in the case of proposals for the making of regulations relating to electro-magnetic radiations, the National Radiological Protection Board);
 - (b) such government departments and other bodies, if any, as, in relation to any matter dealt with in the proposals, the Commission is required to consult under this subsection by virtue of directions given to it by the Secretary of State.
- (4) Where the Minister of Agriculture, Fisheries and Food and the Secretary of State or either of them propose or proposes to make any regulations under any of the relevant statutory provisions, they or he shall before making the regulations consult the Commission and such other bodies as appear to them or him to be appropriate.
- (5) Subsections (1) to (3) above shall not apply to any power of the Secretary of State to make regulations which is capable of being exercised by him for Great Britain jointly with the Minister of Agriculture, Fisheries and Food.

51 Exclusion of application to domestic employment

Nothing in this Part shall apply in relation to a person by reason only that he employs another, or is himself employed, as a domestic servant in a private household.

52 Meaning of work and at work

- (1) For the purposes of this Part—
 - (a) "work" means work as an employee or as a self-employed person;
 - (b) an employee is at work throughout the time when he is in the course of his employment, but not otherwise; and
 - (c) a self-employed person is at work throughout such time as he devotes to work as a self-employed person;and, subject to the following subsection, the expressions "work" and "at work", in whatever context, shall be construed accordingly.
- (2) Regulations made under this subsection may—

- (a) extend the meaning of " work " and " at work " for the purposes of this Part; and
 - (b) in that connection provide for any of the relevant statutory provisions to have effect subject to such adaptations as may be specified in the regulations.
- (3) The power to make regulations under subsection (2) above shall be exercisable—
- (a) in relation to activities not relating exclusively to agricultural operations, by the Secretary of State;
 - (b) in relation to activities relating exclusively to the relevant agricultural purposes, by the appropriate agriculture authority.
- (4) Regulations under subsection (2) above in relation to activities falling within subsection (3)(b) above may be either regulations applying to Great Britain and made by the Minister of Agriculture, Fisheries and Food and the Secretary of State acting jointly, or regulations applying to England and Wales only and made by the said Minister, or regulations applying to Scotland only and made by the Secretary of State; and in subsection (3)(b) above " the appropriate agriculture authority " shall be construed accordingly.

53 General interpretation of Part I

- (1) In this Part, unless the context otherwise requires—
- " agriculture ", subject to subsection (3) below, includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding and keeping (including the management of livestock up to the point of slaughter or export from Great Britain), forestry, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the preparation of land for agricultural use, and " agricultural " shall be construed accordingly;
 - " the Agriculture Ministers " means the Minister of Agriculture, Fisheries and Food and the Secretary of State and, in the case of anything falling to be done by the Agriculture Ministers, means those Ministers acting jointly;
 - " agricultural health and safety regulations " has the meaning assigned by section 30(1);
 - " agricultural licence " means a licence of the Agriculture Ministers or either of them under any of the relevant statutory provisions;
 - " agricultural operation " does not include an agricultural operation performed otherwise than in the course of a trade, business or other undertaking (whether carried on for profit or not) but, subject to subsection (2) below, includes any operation incidental to agriculture which is performed in the course of such a trade, business or undertaking;
 - " the appropriate Agriculture Minister " means, for the purpose of the application of any of the relevant statutory provisions to England and Wales, the Minister of Agriculture, Fisheries and Food, and, for the purpose of the application of any of those provisions to Scotland, the Secretary of State ;
 - " article for use at work " means—
 - (a) any plant designed for use or operation (whether exclusively or not) by persons at work, and
 - (b) any article designed for use as a component in any such plant;
 - " code of practice " (without prejudice to section 16(8)) includes a standard, a specification and any other documentary form of practical guidance;
 - " the Commission " has the meaning assigned by section 10(2);

" conditional sale agreement " means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and 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;

" contract of employment " means a contract of employment or apprenticeship (whether express or implied and, if express, whether oral or in writing);

" credit-sale agreement " means an agreement for the sale of goods, under which the purchase price or part of it is payable by instalments, but which is not a conditional sale agreement;

" domestic premises " means premises occupied as a private dwelling (including any garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling), and " non-domestic premises " shall be construed accordingly;

" employee " means an individual who works under a contract of employment, and related expressions shall be construed accordingly;

" enforcing authority " has the meaning assigned by section 18(7);

" the Executive " has the meaning assigned by section 10(5);

" the existing statutory provisions " means the following provisions while and to the extent that they remain in force, namely the provisions of the Acts mentioned in Schedule 1 which are specified in the third column of that Schedule and of the regulations, orders or other instruments of a legislative character made or having effect under any provision so specified ;

" forestry " includes—

- (a) the felling of trees and the extraction and primary conversion of trees within the wood or forest in which they were grown, and
- (b) the use of land for woodlands where that use is ancillary to the use of land for other agricultural purposes;

" the general purposes of this Part " has the meaning assigned by section 1;

" health and safety regulations " has the meaning assigned by section 15(1);

" 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;
 - (iii) the happening of any other event; and " hire-purchase " shall be construed accordingly ;

" improvement notice " means a notice under section 21;

" inspector " means an inspector appointed under section 19;

" livestock " includes any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the carrying on of any agricultural activity;

" local authority " means—

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(a) in relation to England and Wales, a county council, the Greater London Council, a district council, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple,

(b) in relation to Scotland, a regional, islands or district council except that before 16th May 1975 it means a town council or county council;

" offshore installation " means any installation which is intended for underwater exploitation of mineral resources or exploration with a view to such exploitation ;

" personal injury " includes any disease and any impairment of a person's physical or mental condition;

" plant " includes any machinery, equipment or appliance ;

" premises " includes any place and, in particular, includes—

(a) any vehicle, vessel, aircraft or hovercraft,

(b) any installation on land (including the foreshore and other land intermittently covered by water), any offshore installation, and any other installation (whether floating, or resting on the seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof), and

(c) any tent or movable structure ;

" prescribed " means prescribed by regulations made by the Secretary of State;

" prohibition notice " means a notice under section 22 ;

" the relevant agricultural purposes " means the following purposes, that is to say—

(a) securing the health, safety and welfare at work of persons engaged in agricultural operations,

(b) protecting persons other than persons so engaged against risks to health or safety arising out of or in connection with the activities at work of persons so engaged; and the reference in paragraph (b) above to the risks there mentioned shall be construed in accordance with section 1(3);

" the relevant statutory provisions " means—

(a) the provisions of this Part and of any health and safety regulations and agricultural health and safety regulations; and

(b) the existing statutory provisions ;

" self-employed person " means an individual who works for gain or reward otherwise than under a contract of employment, whether or not he himself employs others;

" substance " means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;

" substance for use at work " means any substance intended for use (whether exclusively or not) by persons at work;

" supply ", where the reference is to supplying articles or substances, means supplying them by way of sale, lease, hire or hire-purchase, whether as principal or agent for another.

(2) In determining in any particular case whether an operation is incidental to agriculture within the meaning of the definition of " agricultural operation" in the preceding subsection, regard shall be had to the magnitude of the operation and to the scale on which it is performed as well as to all other relevant circumstances.

- (3) Provision may be made by order for directing that for the purposes of this Part any activity or operation specified in the order which would or would not otherwise be agriculture within the meaning of this Part shall be treated as not being or, as the case may be, being agriculture for those purposes.
- (4) An order under subsection (3) above may be either an order applying to Great Britain and made by the Minister of Agriculture, Fisheries and Food and the Secretary of State acting jointly, or an order applying to England and Wales only and made by the said Minister, or an order applying to Scotland only and made by the Secretary of State.
- (5) An order under subsection (3) above may be varied or revoked by a subsequent order thereunder made by the authority who made the original order.
- (6) The power to make orders under subsection (3) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

54 Application of Part I to Isles of Scilly

This Part, in its application to the Isles of Scilly, shall apply as if those Isles were a local government area and the Council of those Isles were a local authority.