



# Environmental Protection Act 1990

## 1990 CHAPTER 43

### PART I

#### INTEGRATED POLLUTION CONTROL AND AIR POLLUTION CONTROL BY LOCAL AUTHORITIES

##### *Enforcement*

#### **13 Enforcement notices**

- (1) If the enforcing authority is of the opinion that the person carrying on a prescribed process under an authorisation is contravening any condition of the authorisation, or is likely to contravene any such condition, the authority may serve on him a notice (“an enforcement notice”).
- (2) An enforcement notice shall—
  - (a) state that the authority is of the said opinion;
  - (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;
  - (c) specify the steps that must be taken to remedy the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be; and
  - (d) specify the period within which those steps must be taken.
- (3) The Secretary of State may, if he thinks fit in relation to the carrying on by any person of a prescribed process, give to the enforcing authority directions as to whether the authority should exercise its powers under this section and as to the steps which are to be required to be taken under this section.

#### **14 Prohibition notices**

- (1) If the enforcing authority is of the opinion, as respects the carrying on of a prescribed process under an authorisation, that the continuing to carry it on, or the continuing to carry it on in a particular manner, involves an imminent risk of serious pollution of the

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environment the authority shall serve a notice (a “prohibition notice”) on the person carrying on the process.

- (2) A prohibition notice may be served whether or not the manner of carrying on the process in question contravenes a condition of the authorisation and may relate to any aspects of the process, whether regulated by the conditions of the authorisation or not.
- (3) A prohibition notice shall—
  - (a) state the authority’s opinion;
  - (b) specify the risk involved in the process;
  - (c) specify the steps that must be taken to remove it and the period within which they must be taken; and
  - (d) direct that the authorisation shall, until the notice is withdrawn, wholly or to the extent specified in the notice cease to have effect to authorise the carrying on of the process;

and where the direction applies to part only of the process it may impose conditions to be observed in carrying on the part which is authorised to be carried on.
- (4) The Secretary of State may, if he thinks fit in relation to the carrying on by any person of a prescribed process, give to the enforcing authority directions as to—
  - (a) whether the authority should perform its duties under this section; and
  - (b) the matters to be specified in any prohibition notice in pursuance of subsection (3) above which the authority is directed to issue.
- (5) The enforcing authority shall, as respects any prohibition notice it has issued to any person, by notice in writing served on that person, withdraw the notice when it is satisfied that the steps required by the notice have been taken.

## **15 Appeals as respects authorisations and against variation, enforcement and prohibition notices**

- (1) The following persons, namely—
  - (a) a person who has been refused the grant of an authorisation under section 6 above;
  - (b) a person who is aggrieved by the conditions attached, under any provision of this Part, to his authorisation;
  - (c) a person who has been refused a variation of an authorisation on an application under section 11 above;
  - (d) a person whose authorisation has been revoked under section 12 above;

may appeal against the decision of the enforcing authority to the Secretary of State (except where the decision implements a direction of his).
- (2) A person on whom a variation notice, an enforcement notice or a prohibition notice is served may appeal against the notice to the Secretary of State.
- (3) Where an appeal under this section is made to the Secretary of State—
  - (a) the Secretary of State may refer any matter involved in the appeal to a person appointed by him for the purpose; or
  - (b) the Secretary of State may, instead of determining the appeal himself, direct that the appeal or any matter involved in it shall be determined by a person appointed by him for the purpose;

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and a person appointed under paragraph (b) above for the purpose of an appeal shall have the same powers under subsection (5), (6) or (7) below as the Secretary of State.

- (4) An appeal under this section shall, if and to the extent required by regulations under subsection (10) below, be advertised in such manner as may be prescribed by regulations under that subsection.
- (5) If either party to the appeal so requests or the Secretary of State so decides, an appeal shall be or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held, or held to any extent, in private).
- (6) On determining an appeal against a decision of an enforcing authority under subsection (1) above, the Secretary of State—
  - (a) may affirm the decision;
  - (b) where the decision was a refusal to grant an authorisation or a variation of an authorisation, may direct the enforcing authority to grant the authorisation or to vary the authorisation, as the case may be;
  - (c) where the decision was as to the conditions attached to an authorisation, may quash all or any of the conditions of the authorisation;
  - (d) where the decision was to revoke an authorisation, may quash the decision;and where he exercises any of the powers in paragraphs (b), (c) or (d) above, he may give directions as to the conditions to be attached to the authorisation.
- (7) On the determination of an appeal under subsection (2) above the Secretary of State may either quash or affirm the notice and, if he affirms it, may do so either in its original form or with such modifications as he may in the circumstances think fit.
- (8) Where an appeal is brought under subsection (1) above against the revocation of an authorisation, the revocation shall not take effect pending the final determination or the withdrawal of the appeal.
- (9) Where an appeal is brought under subsection (2) above against a notice, the bringing of the appeal shall not have the effect of suspending the operation of the notice.
- (10) Provision may be made by the Secretary of State by regulations with respect to appeals under this section and in particular—
  - (a) as to the period within which and the manner in which appeals are to be brought; and
  - (b) as to the manner in which appeals are to be considered.

## **16 Appointment of chief inspector and other inspectors**

- (1) The Secretary of State may appoint as inspectors (under whatever title he may determine) such persons having suitable qualifications as he thinks necessary for carrying this Part into effect in relation to prescribed processes designated for central control or for the time being transferred under section 4(4) above to central control, and may terminate any appointment made under this subsection.
- (2) The Secretary of State may make to or in respect of any person so appointed such payments by way of remuneration, allowances or otherwise as he may with the approval of the Treasury determine.
- (3) In relation to England and Wales the Secretary of State shall constitute one of the inspectors appointed under subsection (1) above to be the chief inspector for England

and Wales and in relation to Scotland the Secretary of State shall constitute one of the said inspectors to be the chief inspector for Scotland.

- (4) The functions conferred or imposed by or under this Part on the chief inspector as the enforcing authority may, to any extent, be delegated by him to any other inspector appointed under subsection (1) above.
- (5) A river purification authority may appoint as inspectors (under whatever title the authority may determine) such persons having suitable qualifications as the authority thinks necessary for carrying this Part into effect in relation to prescribed processes designated for central control and may terminate any appointment made under this subsection.
- (6) Any local authority may appoint as inspectors (under whatever title the authority may determine) such persons having suitable qualifications as the authority think necessary for carrying this Part into effect in the authority's area in relation to prescribed processes designated for local control (and not so transferred), and may terminate any appointment made under this subsection.
- (7) An inspector shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under section 17 or 18 below if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.
- (8) In the following provisions of this Part "inspector" means a person appointed as an inspector under subsection (1), (5) or (6) above.

## **17 Powers of inspectors and others**

- (1) An inspector may, on production (if so required) of his authority, exercise any of the powers in subsection (3) below for the purposes of the discharge of the functions of the enforcing authority.
- (2) Those powers, so far as exercisable in relation to premises, are exercisable in relation—
  - (a) to premises on which a prescribed process is, or is believed (on reasonable grounds) to be, carried on; and
  - (b) to premises on which a prescribed process has been carried on (whether or not the process was a prescribed process when it was carried on) the condition of which is believed (on reasonable grounds) to be such as to give rise to a risk of serious pollution of the environment.
- (3) The powers of an inspector referred to above are—
  - (a) at any reasonable time (or, in a situation in which in his opinion there is an immediate risk of serious pollution of the environment, at any time) to enter premises which he has reason to believe it is necessary for him to enter;
  - (b) on entering any premises by virtue of paragraph (a) above to take with him—
    - (i) any person duly authorised by the chief inspector, the river purification authority or, as the case may be, the local enforcing authority and, if the inspector has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and
    - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;

- (c) to make such examination and investigation as may in any circumstances be necessary;
- (d) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (c) above;
- (e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c) above;
- (f) to take samples of any articles or substances found in or on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;
- (g) in the case of any article or substance found in or on any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause pollution of the environment, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is necessary);
- (h) in the case of any such article or substance as is mentioned in paragraph (g) above, to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
  - (i) to examine it and do to it anything which he has power to do under that paragraph;
  - (ii) to ensure that it is not tampered with before his examination of it is completed;
  - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under section 23 below or any other proceedings relating to a variation notice, an enforcement notice or a prohibition notice;
- (i) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (c) above to answer (in the absence of persons other than a person nominated to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers;
- (j) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which are required to be kept under this Part or it is necessary for him to see for the purposes of an examination or investigation under paragraph (c) above and to inspect and take copies of, or of any entry in, the records;
- (k) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by this section;
- (l) any other power for the purpose mentioned in subsection (1) above which is conferred by regulations made by the Secretary of State;

and in so far as any of the powers specified above are applicable in relation to mobile plant an inspector shall have, in circumstances corresponding to those specified in subsection (2) above, powers corresponding to those powers.

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- (4) The Secretary of State may by regulations make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under subsection (3)(f) above.
- (5) Where an inspector proposes to exercise the power conferred by subsection (3)(g) above in the case of an article or substance found on any premises, he shall, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.
- (6) Before exercising the power conferred by subsection (3)(g) above in the case of any article or substance, an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under the power.
- (7) Where under the power conferred by subsection (3)(h) above an inspector takes possession of any article or substance found on any premises, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and before taking possession of any such substance under that power an inspector shall, if it is practical for him to do so, take a sample of it and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.
- (8) No answer given by a person in pursuance of a requirement imposed under subsection (3)(i) above shall be admissible in evidence in England and Wales against that person in any proceedings, or in Scotland against that person in any criminal proceedings.
- (9) The powers conferred by subsection (3)(a), (b)(ii), (c), (e) and (f) above shall also be exercisable (subject to subsection (4) above) by any person authorised for the purpose in writing by the Secretary of State.
- (10) Nothing in this section shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court or, in relation to Scotland, on an order for the production of documents in an action in the Court of Session.

## **18 Power to deal with cause of imminent danger of serious harm**

- (1) Where, in the case of any article or substance found by him on any premises which he has power to enter, an inspector has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious harm he may seize it and cause it to be rendered harmless (whether by destruction or otherwise).
- (2) Before there is rendered harmless under this section—
  - (a) any article that forms part of a batch of similar articles; or
  - (b) any substance,the inspector shall, if it is practicable for him to do so, take a sample of it and give to a responsible person at the premises where the article or substance was found by him a portion of the sample marked in a manner sufficient to identify it.

- (3) As soon as may be after any article or substance has been seized and rendered harmless under this section, the inspector shall prepare and sign a written report giving particulars of the circumstances in which the article or substance was seized and so dealt with by him, and shall—
- (a) give a signed copy of the report to a responsible person at the premises where the article or substance was found by him; and
  - (b) unless that person is the owner of the article or substance, also serve a signed copy of the report on the owner;
- and if, where paragraph (b) above applies, the inspector cannot after reasonable inquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under paragraph (a) above.

## **19 Obtaining of information from persons and authorities**

- (1) For the purposes of the discharge of his functions under this Part, the Secretary of State may, by notice in writing served on an enforcing authority, require the authority to furnish such information about the discharge of its functions as an enforcing authority under this Part as he may require.
- (2) For the purposes of the discharge of their respective functions under this Part, the following authorities, that is to say—
  - (a) the Secretary of State,
  - (b) a local enforcing authority,
  - (c) the chief inspector, and
  - (d) in relation to Scotland, a river purification authority,may, by notice in writing served on any person, require that person to furnish to the authority such information which the authority reasonably considers that it needs as is specified in the notice, in such form and within such period following service of the notice as is so specified.
- (3) For the purposes of this section the discharge by the Secretary of State of an obligation of the United Kingdom under the Community Treaties or any international agreement relating to environmental protection shall be treated as a function of his under this Part.