

SCHEDULES

SCHEDULE 8

INSPECTORS

PART 2

POWERS EXERCISABLE BY INSPECTORS AUTHORISED BY INSTRUMENT OF APPOINTMENT: IMPROVEMENT NOTICES AND PROHIBITION NOTICES

Improvement notices

- 3 (1) This paragraph applies where an inspector is of the opinion that a person—
- (a) is contravening one or more applicable provisions, or
 - (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated.
- (2) The inspector may, if authorised, give the person a notice (an “improvement notice”) requiring the person to remedy—
- (a) the contravention, or
 - (b) as the case may be, the matters giving rise to the notice, within the period specified in the notice.
- (3) The improvement notice must—
- (a) specify the applicable provision or provisions in question, and
 - (b) state that the inspector is of the opinion mentioned in sub-paragraph (1), and why.
- (4) The period specified under sub-paragraph (2) must end no earlier than the period within which an appeal against the notice may be brought under paragraph 6.
- (5) In this paragraph “applicable provision” means—
- (a) any of the relevant statutory provisions other than—
 - (i) a provision of the Nuclear Safeguards Act 2000, or
 - (ii) any provision of nuclear regulations identified in accordance with section 74(9) (requirement for provisions made for nuclear security purposes or nuclear safeguards purposes, or both, to be identified as such), or
 - (b) any condition attached to a nuclear site licence under section 4 of the Nuclear Installations Act 1965 relating to a site in England, Wales or Scotland.

Prohibition notices

- 4 (1) This paragraph applies where an inspector is of the opinion that—

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- (a) relevant activities, as they are being carried on by or under the control of a person, involve a risk of serious personal injury, or
 - (b) relevant activities which are likely to be carried on by or under the control of a person will, as so carried on, involve a risk of serious personal injury.
- (2) The inspector may, if authorised, give the person a notice (“a prohibition notice”) directing that the activities to which the notice relates must not be carried on by or under the control of the person unless the following have been remedied—
- (a) the matters specified in the notice under sub-paragraph (3)(b), and
 - (b) any associated contraventions of provisions specified under sub-paragraph (3)(c).
- (3) A prohibition notice must—
- (a) state that the inspector is of the opinion mentioned in sub-paragraph (1);
 - (b) specify the matters which in the inspector’s opinion give, or, as the case may be, will give rise to the risk mentioned in that sub-paragraph;
 - (c) where in the inspector’s opinion any of those matters involves or, as the case may be, will involve a contravention of any applicable provision—
 - (i) specify the provision or provisions in question, and
 - (ii) state that the inspector is of that opinion, and why.
- (4) A prohibition notice takes effect—
- (a) at the end of the period specified in the notice, or
 - (b) if the notice so specifies, immediately.
- (5) In this paragraph—
- “applicable provision” has the same meaning as in paragraph 3;
 - “relevant activities” means any activities in relation to which any applicable provision applies (or would apply if they were being carried on).

Improvement and prohibition notices: supplementary

- 5 (1) In this paragraph “a notice” means an improvement notice or a prohibition notice.
- (2) A notice may (but need not) include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates.
- (3) Any such directions—
- (a) may be expressed by reference to any approved code of practice, and
 - (b) may afford the person to whom the notice is given a choice between different ways of remedying the contravention or matter.
- (4) Sub-paragraph (5) applies where—
- (a) any of the applicable provisions applies to a building or any matter connected with a building, and
 - (b) an inspector proposes to serve an improvement notice relating to a contravention of that provision in connection with the building or matter.
- For this purpose “applicable provision” has the same meaning as in paragraph 3.
- (5) The notice must not direct any measures to be taken to remedy the contravention that are more onerous than any measures that would be necessary to secure conformity with—

- (a) current new-build requirements, or
 - (b) if the provision in question imposes specific requirements that are more onerous than the requirements of any current new-build requirements, those specific requirements.
- (6) In sub-paragraph (5), “current new-build requirements”, in relation to a building, or matter connected with a building, means the requirements of any building regulations for the time being in force to which the building or matter would be required to conform if the relevant building were being newly erected.
- (7) In sub-paragraph (6), “building regulations”, in relation to Scotland, has the meaning given by section 1 of the Building (Scotland) Act 2003 (asp 8).
- (8) Where an improvement notice or a prohibition notice which is not to take immediate effect has been given—
- (a) the notice may be withdrawn by an inspector at any time before the end of the period specified in it under paragraph 3(2) or 4(4)(a), and
 - (b) the period so specified may be extended or further extended by an inspector at any time when an appeal against the notice is not pending.

Appeal against improvement or prohibition notice

- 6 (1) In this paragraph “a notice” means an improvement notice or a prohibition notice.
- (2) A person to whom a notice is given may appeal within such period after the notice is given as may be prescribed by regulations made by the Secretary of State (“the prescribed period”).
- (3) An appeal under this paragraph lies to an employment tribunal.
- (4) On an appeal, the tribunal may—
- (a) cancel the notice, or
 - (b) confirm it—
 - (i) in its original form, or
 - (ii) with such modifications as, in the circumstances, the tribunal considers appropriate.
- (5) Where an appeal under this paragraph is brought against an improvement notice within the prescribed period, the operation of the notice is suspended until the appeal is withdrawn or finally disposed of.
- (6) Where—
- (a) an appeal under this paragraph is brought against a prohibition notice within the prescribed period, and
 - (b) on the application of the appellant, the tribunal so directs,
- the operation of the notice is suspended from the time the direction is given until the appeal is withdrawn or finally disposed of.
- (7) One or more assessors may be appointed for the purposes of any proceedings brought before an employment tribunal under this paragraph.

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Improvement and prohibition notices: offences

- 7 (1) It is an offence to contravene any requirement or prohibition imposed by an improvement notice or a prohibition notice.
- (2) A person who commits an offence under this paragraph is liable—
- (a) on summary conviction—
 - (i) to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland),
 - (ii) to a fine (in England and Wales) or a fine not exceeding £20,000 (in Scotland), or
 - (iii) to both;
 - (b) on conviction on indictment—
 - (i) to imprisonment for a term not exceeding 2 years,
 - (ii) to a fine, or
 - (iii) to both.
- (3) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's powers to imprison), the reference in sub-paragraph (2)(a)(i), as it has effect in England and Wales, to 12 months is to be read as a reference to 6 months.