

1977 No. 746

HEALTH AND SAFETY

The Health and Safety (Enforcing Authority)
Regulations 1977

<i>Made - - - -</i>	<i>27th April 1977</i>
<i>Laid before Parliament</i>	<i>6th May 1977</i>
<i>Coming into Operation</i>	<i>1st June 1977</i>

The Secretary of State in exercise of the powers conferred on him by sections 15(1) and (3)(a), 18(2) and 82(3)(a) of the Health and Safety at Work etc. Act 1974(a) ("the 1974 Act") as amended by section 116 of and paragraph 6 of Schedule 15 to the Employment Protection Act 1975(b) and of all other powers enabling him in that behalf and for the purpose of giving effect without modifications to proposals submitted to him by the Health and Safety Commission under section 11(2)(d) of the 1974 Act after the carrying out by the said Commission of consultations in accordance with section 50(3) of that Act, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Health and Safety (Enforcing Authority) Regulations 1977 and shall come into operation on 1st June 1977.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

"the 1974 Act" means the Health and Safety at Work etc. Act 1974;

"local authority" means—

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

(b) in relation to Scotland, an islands or district council;

"relevant statutory provisions" has the meaning assigned by section 53(1) of the 1974 Act.

(2) The Interpretation Act 1889(c) shall apply for the interpretation of these Regulations as it applies for the interpretation of an Act of Parliament.

Local authorities to be enforcing authorities in certain cases

3. Where the main activity carried on in any premises is specified in Schedule 1 to these Regulations, then subject to Regulations 4, 5 and 6 below, the local authority for the area in which those premises are situated shall be the enforcing authority for the relevant statutory provisions in relation to those premises and to any activity carried on in them.

(a) 1974 c. 37.

(b) 1975 c. 71.

(c) 1889 c. 63.

Exceptions

4.—(1) Regulation 3 above shall not apply to any of the following premises or to any activities carried on in them that is to say premises which are occupied by, or controlled within the meaning of section 4 of the 1974 Act by—

- (a) a local authority as defined in Regulation 2(1) above;
- (b) any other local authority within the meaning of section 53(1) of the 1974 Act;
- (c) a police authority within the meaning of section 62 of the Police Act 1964(a) or the Receiver for the Metropolitan Police District;
- (d) a fire authority within the meaning of section 43(1) of the Fire Precautions Act 1971(b);
- (e) the United Kingdom Atomic Energy Authority;
- (f) the Crown, except that it shall apply to premises occupied or controlled by the Health and Safety Executive and to activities carried on in them.

(2) Notwithstanding Regulation 3 above, the Health and Safety Executive shall be the enforcing authority in respect of any of the following activities carried on in any premises whether or not it is the main activity carried on in those premises—

- (a) construction work carried out by a person whose main activity is one for which the Executive is responsible for the enforcement of the relevant statutory provisions;
- (b) the installation, maintenance and repair of gas, water or electricity systems where this is carried out by a person whose main activity is one for which the Executive is responsible for the enforcement of the relevant statutory provisions;
- (c) the construction, installation, maintenance and repair of telecommunication systems;

in this paragraph “construction work” means a “building operation” and a “work of engineering construction” within the meanings assigned to those expressions by section 176(1) of the Factories Act 1961(c).

(3) Regulation 3 above shall not apply to any licensing or enforcing responsibility which, by virtue of any of the existing statutory provisions within the meaning of section 53(1) of the 1974 Act, is exercised by any of the following authorities—

- (a) in England and Wales, the Greater London Council, a county council or a harbour authority;
- (b) in Scotland, a regional council or a harbour authority.

Arrangements enabling responsibility for enforcement to be transferred

5.—(1) The responsibility for enforcing any of the relevant statutory provisions in a particular case may be transferred in accordance with the following provisions of these Regulations from the Executive to the local authority, or, as the case may be, from the local authority to the Executive.

(a) 1964 c. 48.

(b) 1971 c. 40.

(c) 1961 c. 34.

(2) The transfer may be made only by agreement between the enforcing authority which has the current responsibility and the authority to which it is proposed to transfer it, or by the Health and Safety Commission.

(3) Before making any such agreement, the authority currently responsible shall give notice of the proposal to the persons who will be affected by it and such notice shall include a statement of the effect of paragraph (4) of this Regulation.

(4) If a person who has received a notice under paragraph (3) of this Regulation lodges with the Commission an objection to the transfer within 21 days from the date when the notice was given to him, a transfer may be made only if the Commission so directs and if no such objection is lodged the agreement may be made after the expiration of the said 21 days.

(5) Where the Commission proposes to make a transfer it shall give notice to both enforcing authorities concerned and to persons who will be affected by it and shall not make the transfer until 21 days after the last such notice has been given.

(6) Where a transfer has been made under the preceding provisions of this Regulation, the authority which made the transfer shall as soon as reasonably practicable give notice of the transfer to the persons to whom notice was given under paragraph (3) or (5) of this Regulation as the case may be.

(7) The preceding provisions of this Regulation shall not apply to premises occupied by or controlled by the Crown or to any activity carried on there but responsibility for enforcing any of the relevant statutory provisions in respect of office activities (within the meaning of Part II of Schedule 1 to these Regulations) and the premises used for them may be transferred by an agreement between the Health and Safety Executive, the local authority concerned and the Government Department or other public body concerned and any such agreement may be cancelled by like agreement or by the Health and Safety Commission.

Assignment of responsibility in case of uncertainty

6.—(1) For the purpose of removing uncertainty in any particular case as to what are their respective responsibilities by virtue of Regulations made under section 18(2) of the 1974 Act either the Executive or the local authority may apply to the Health and Safety Commission and where the Commission considers that there is uncertainty it shall, after considering the circumstances and any views which may have been expressed to them by either enforcing authority or by persons affected, assign the responsibility to whichever authority it considers appropriate.

(2) When responsibility for enforcement has been assigned under paragraph (1) of this Regulation, the Commission shall cause notice of the assignment to be given to the authorities concerned and the persons affected by it.

Service of notices

7. Any notice which is required to be given by these Regulations and which is given in accordance with the provisions of section 46 of the 1974 Act shall be deemed to have been duly given for the purposes of these Regulations.

Repeals and modifications of Acts and orders

8.—(1) The provisions of the Agriculture (Safety, Health and Welfare Provisions) Act 1956(a) specified in column 1 of Schedule 2 to these Regulations are repealed or modified, as the case may be, to the extent set out opposite thereto in column 2 of that Schedule.

(2) The provisions of the Factories Act 1961 set out in column 1 of Schedule 3 to these Regulations are repealed to the extent set out opposite thereto in column 2 of that Schedule.

(3) The provisions of the Offices, Shops and Railway Premises Act 1963(b) set out in column 1 of Schedule 4 to these Regulations are repealed to the extent set out opposite thereto in column 2 of that Schedule.

(4) The following orders are hereby revoked—

(a) the Local Authorities (Transfer of Enforcement) Order 1938(c); and

(b) the Local Authorities (Transfer of Enforcement) (Amendment) Order 1950(d).

Signed by order of the Secretary of State
27th April 1977.

John Grant,
Joint Parliamentary Under Secretary of State,
Department of Employment.

(a) 1956 c. 49. (b) 1963 c. 41.
(c) S.R. & O. 1938/488 (Rev. VII, p. 115: 1938 I, p. 1202).
(d) S.I. 1950/842 (1950 I, p. 656).

Regulation 3

SCHEDULE 1

MAIN ACTIVITIES WHICH DETERMINE WHETHER LOCAL AUTHORITIES WILL BE ENFORCING AUTHORITIES

PART I

1. The sale or storage of goods for retail or wholesale distribution other than:—
 - (a) on premises controlled or occupied by a railway undertaking;
 - (b) in warehouses or other premises controlled or occupied by the owners, trustees or conservators of a dock, wharf or quay;
 - (c) at container depots;
 - (d) water and sewage and their by-products;
 - (e) natural gas and town gas;
 - (f) solid fuel or other minerals at any mine or quarry or at premises controlled from a mine or quarry;
 - (g) petroleum spirit in premises where motor vehicles are maintained or repaired by way of trade;
 - (h) wholesale distribution of flammable, toxic, oxidizing, corrosive or explosive substances or petroleum spirit.
2. Office activities.
3. Catering services.
4. The provision of residential accommodation.
5. Consumer services provided in shop premises except dry cleaning or radio and television repairs.
6. Dry cleaning in coin operated units in launderettes and similar premises.

PART II

7. In this Schedule—

“office activities” includes any activity for the purposes of administration, clerical work, handling money and telephone and telegraph operating; and for this purpose “clerical work” includes writing, book-keeping, sorting papers, filing, typing, duplicating, machine calculating, drawing and the editorial preparation of matter for publication except where that preparation is on the premises where newspapers, magazines, periodicals or books are printed;

“shop premises” means—

- (a) a shop;
- (b) a building or part of a building, being a building or part which is not a shop but of which the sole or principal use is the carrying on there of retail trade or business;
- (c) a building occupied by a wholesale dealer or merchant where goods are kept for sale wholesale or a part of a building so occupied where goods are so kept, but not including a warehouse belonging to the owners, trustees or conservators of a dock, wharf or quay;
- (d) a building to which members of the public are invited to resort for the purpose of delivering there goods for repair or other treatment or of themselves there carrying out repairs to, or other treatment of goods or a part of a building to which members of the public are invited to resort for that purpose;
- (e) any premises occupied for the purpose of a trade or business which consists of, or includes, the sale of solid fuel, being premises used for the storage of such fuel intended to be sold in the course of that trade or business, but not including dock storage premises or colliery storage premises.

SCHEDULE 2

Regulation 8(1)

AGRICULTURE (SAFETY, HEALTH AND WELFARE PROVISIONS) ACT 1956

Repeals and Modifications

1 Provisions	2 Repeals and Modifications
Section 3(1)	(a) For "a sanitary authority" substitute "the Health and Safety Executive"; (b) The words "within their district" are hereby repealed; (c) For "the authority" substitute "the Executive".
Section 3(5)	(a) For the words from the beginning of the subsection to the word "serve" substitute "The Health and Safety Executive shall not serve"; (b) For "they are" to "is satisfied" substitute "it is satisfied"; (c) The words "the authority are or (as the case may be) that" are hereby repealed.
Section 3(7)(a)	For the words from the beginning of the paragraph to "or has" substitute "that the Health and Safety Executive has".
Section 5	(a) For "a sanitary authority" substitute "the Health and Safety Executive"; (b) The words "within their district" are hereby repealed.
Section 11	This section is hereby repealed.
Section 24(1)	The definition of "sanitary authority" is hereby repealed.
Section 24(3)	This subsection is hereby repealed.
Section 25(3)	In section 3 of the Act as substituted by this subsection— (i) for "a local authority" in each place where those words occur substitute "the Health and Safety Executive"; (ii) the words "in their district" are hereby repealed; (iii) for "the authority" in each place where those words occur substitute "the Executive".
Section 25(8) and (9)	These subsections are hereby repealed.
Section 25(10)	(a) The definition of "local authority" is hereby repealed; (b) The words "sanitary authority" are hereby repealed.

Regulation 8(2)

SCHEDULE 3

THE FACTORIES ACT 1961

Repeals

1 Provision	2 Extent of Repeal
Section 8	The whole section.
Section 153	(a) In subsection (1)(a), the words "Part I and"; (b) Subsection (2).
Section 181	In subsection (1) the words "and shall be enforced by the district council".
Schedule 5	In the heading, the words "and administered by district councils".

Regulation 8(3)

SCHEDULE 4

THE OFFICES, SHOPS AND RAILWAY PREMISES ACT 1963

Repeals

1 Provision	2 Extent of Repeal
Section 52	The whole section except subsection (5).
Section 89	The whole section.
Section 90	The definition of "local authority".

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations make changes in the responsibility for enforcing the Health and Safety at Work etc. Act 1974 and the other relevant statutory provisions within the meaning of that Act.

Where the main activity carried on in any premises is specified in Schedule 1 to the Regulations, then, subject to specified exceptions, the local authority will be the enforcing authority in respect of all activities carried on in those premises; in all other cases it will be the Health and Safety Executive.

The Regulations provide arrangements enabling responsibility for enforcement to be transferred between enforcing authorities and for assignment of responsibility in cases of uncertainty.

The Regulations repeal certain provisions of the Agriculture (Safety, Health and Welfare Provisions) Act 1956, the Factories Act 1961 and the Offices, Shops and Railway Premises Act 1963 relating to enforcement.

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