
STATUTORY INSTRUMENTS

1999 No. 743

The Control of Major Accident Hazards Regulations 1999

PART 6

FUNCTIONS OF COMPETENT AUTHORITY

Functions of competent authority in relation to the safety report

17.—(1) The competent authority shall within a reasonable period of time of receiving a safety report—

- (a) communicate the conclusions of its examination of the report to the operator of the establishment concerned; or
- (b) prohibit the operation or bringing into operation of the establishment or installation concerned or any part thereof in accordance with regulation 18.

(2) Where, pursuant to regulation 7(10), a report has been sent to the competent authority in parts, paragraph 17(1)(a) shall apply—

- (a) to each part of the report, as if the reference to communicating the conclusions of the examination were a reference to communicating provisional conclusions;
- (b) to all parts of the report, as if the reference to communicating the conclusions of the examination within a reasonable period of time of receiving a safety report were a reference to communicating, within a reasonable period of time of receiving the last part, the examination of the parts as a whole having regard, in particular, to the inter-relationship between different industrial activities in the establishment.

Prohibition of use

18.—(1) The competent authority shall prohibit the operation or bringing into operation of any establishment or installation or any part thereof where the measures taken by the operator for the prevention and mitigation of major accidents are seriously deficient.

(2) The competent authority may prohibit the operation or bringing into operation of any establishment or installation or any part thereof if the operator has failed to submit any notification, safety report or other information required by or under these Regulations within the time so required.

(3) Where the competent authority proposes to prohibit an operation or the bringing into operation of an establishment or installation or any part thereof pursuant to this regulation, it shall serve on the operator a notice giving reasons for the prohibition and specifying the date when it is to take effect, and any such notice may be withdrawn in writing by the competent authority.

(4) A notice served pursuant to paragraph (3) may specify measures which, if taken, would cause the competent authority to withdraw the notice.

(5) Where a notice has been served on an operator in accordance with paragraph (3) the operator shall comply with it (including any such notice as modified on appeal).

(6) Section 24 of the 1974 Act (appeal against improvement or prohibition notice) and, in England and Wales, regulation 8(4)(b) of, and Schedule 4 to, the Employment Tribunals (Constitution and Rules of Procedure) Regulations 1993(1) and, in Scotland, regulation 8(4)(b) of, and Schedule 4 to the Employment Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 1993(2) shall apply in relation to a notice served under this regulation as they apply in relation to a prohibition notice served under section 22 of that Act.

Inspections and investigations

19.—(1) The competent authority shall organise an adequate system of inspections of establishments or other measures of control appropriate to the type of establishment concerned.

(2) The inspections or control measures referred to in paragraph (1) shall not be dependent upon the receipt of any report submitted by the operator and they shall be sufficient for a planned and systematic examination of the systems being employed at the establishment, whether of a technical, organisational or managerial nature, so as to ensure in particular—

- (a) that the operator can demonstrate that he has taken appropriate measures to prevent major accidents;
 - (b) that the operator can demonstrate that he has provided appropriate means for limiting the consequences of major accidents both inside and outside the establishment;
 - (c) that the information contained in any report sent to the competent authority by the operator of the establishment adequately reflects the conditions in the establishment; and
 - (d) that information has been supplied to the public pursuant to regulation 14.
- (3) A system of inspection referred to in paragraph (1) shall meet the following conditions—
- (a) there shall be a programme of inspections for all establishments;
 - (b) unless such a programme is based upon a systematic appraisal of major accident hazards of the particular establishment concerned, the programme shall, in the case of establishments to which regulations 7 to 14 apply, entail at least one on-site inspection made on behalf of the competent authority every 12 months;
 - (c) following each inspection, a report shall be prepared by the competent authority; and
 - (d) where necessary, matters shall be pursued with the operator within a reasonable period following the inspection.

(4) Where the competent authority or the Executive has been informed of a major accident at an establishment the competent authority shall—

- (a) obtain from the operator of the establishment—
 - (i) information as respects the circumstances of the accident, the dangerous substances involved, the data available for assessing the effects of the accident on persons and the environment, the emergency measures taken and the steps envisaged to alleviate the medium and long-term effects of the accident and to prevent any recurrence of it, and
 - (ii) such other information in the operator's possession as will enable the competent authority to notify the European Commission pursuant to regulation 21(1);

(1) S.I.1993/2687, amended by S.I. 1994/538 and 1996/1758. The title of these Regulations, formerly the “Industrial Tribunals (Constitution and Rules of Procedure) Regulations 1993” was amended by operation of section 1 of the Employment Rights (Dispute Resolution) Act 1998 c. 8.

(2) S.I. 1993/2688, amended by S.I. 1994/538 and 1996/1758. The title of these Regulations, formerly the “Industrial Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 1993” was amended by operation of section 1 of the Employment Rights (Dispute Resolution) Act 1998 c. 8.

- (b) ensure that any urgent, medium and long-term measures which may prove necessary are taken;
- (c) make a full analysis of the technical, organisational and managerial aspects of the major accident and collect, by inspection, investigation or other appropriate means, the information necessary for that purpose;
- (d) take appropriate action to ensure that the operator takes any necessary remedial measures; and
- (e) make recommendations on future preventive measures.

Enforcement

20.—(1) Sections—

- (a) 16 to 21 (approval of codes of practice and enforcement);
- (b) 23 (provisions supplementary to sections 21 and 22) and 24 (appeal against improvement or prohibition notice), so far as they relate to an improvement notice;
- (c) 26 (power to indemnify inspectors); and
- (d) 33 to 42 (provisions as to offences),

of the 1974 Act, shall, subject to paragraphs (2) and (3), and to the extent they would not otherwise do so, apply to these Regulations as if they were health and safety regulations for the purposes of that Act, and any function of the Health and Safety Commission under any other provision of the 1974 Act which is exercisable in relation to any function of the Executive under or in respect of health and safety regulations (including their enforcement) shall be exercisable as if these Regulations were, to the extent they would not otherwise be so, health and safety regulations for the purposes of that Act.

(2) A failure to discharge a duty placed on the competent authority by these Regulations shall not be an offence, and section 33(1)(c) of the 1974 Act shall have effect accordingly.

(3) Section 18(1) of the 1974 Act (duty to make adequate arrangements for enforcement) shall apply in relation to the enforcement of these Regulations as if the reference to the Executive included a reference to the Agency, but nothing in this paragraph shall have the effect of making the Agency an enforcing authority for the purposes of the 1974 Act.

(4) Without prejudice to the provisions of the 1974 Act referred to in paragraph (1), section 108(1) of the Environment Act 1995⁽³⁾ shall have effect in relation to a person authorised by the Agency as if the reference in that section to a pollution control enactment included a reference to these Regulations and as if the reference to a pollution control function included a reference to any function conferred or imposed on the Agency by or under these Regulations.

(5) Without prejudice to the functions of an inspector appointed under section 19 of the 1974 Act, a person referred to in paragraph (4) may, notwithstanding that he is not an inspector so appointed, serve an improvement notice under section 21 of that Act in respect of a contravention of these Regulations, and the reference to an inspector in section 23(4) of that Act shall have effect accordingly.

(6) Notwithstanding the Health and Safety (Enforcing Authority) Regulations 1998⁽⁴⁾ the Executive shall, for the purposes of the 1974 Act, be the enforcing authority for the relevant statutory provisions at an establishment to which any of these Regulations apply.

⁽³⁾ 1995 c. 25.

⁽⁴⁾ S.I. 1998/494.

Provision of information by competent authority

21.—(1) The competent authority shall notify the European Commission as soon as practicable of any major accident meeting the criteria specified in Part 1 of Schedule 7.

(2) The notification referred to in paragraph (1) shall contain the information specified in Part 2 of Schedule 7.

(3) The competent authority shall notify the European Commission of any analysis and recommendations made pursuant to regulation 19(4)(c) and (e).

(4) Schedule 8 (provision of information by competent authority) shall have effect.

(5) This regulation shall apply notwithstanding the provisions of section 28 of the 1974 Act.

Fee payable by operator

22.—(1) A fee shall be payable by the operator of an establishment to the Executive for the performance by or on behalf of the competent authority of any function conferred on the authority by these Regulations (except regulations 10(2), (6) and (7)).

(2) A fee shall be payable by the operator of an establishment to the Executive for the performance—

(a) by or on behalf of the Executive or the Agency of any function relating to the enforcement of these Regulations conferred on the Executive or Agency by the 1974 Act or by virtue of regulation 20; and

(b) by an inspector or authorised person of any such function conferred on him by the Act or by virtue of that regulation.

(3) The fee referred to in paragraphs (1) and (2) shall—

(a) not exceed the sum of the costs reasonably incurred by the competent authority, the Executive or the Agency, as the case may be, for the performance of the functions in relation to the establishment concerned;

(b) be payable within 30 days from the date of the invoice that the Executive has sent or given to the operator such invoice to include a statement of the work done and the cost incurred including the period to which the statement relates.

(4) The Executive shall pay to the Agency any such fee or part of any such fee it recovers as is attributable to work done by or on behalf of the Agency or by an authorised person in performing the functions concerned.

(5) Any fee payable under this regulation shall be recoverable only as a civil debt.

(6) Any fee payable under this regulation shall not include costs connected with—

(a) in England and Wales, any criminal investigation or prosecution incurred (in either case) from the date any summons is obtained from a Magistrate's Court;

(b) in Scotland, any investigation carried out with a view to it being ascertained whether the operator should be prosecuted for an offence of contravening these Regulations, or where such a prosecution has been commenced against the operator, any costs connected with that prosecution; and

(c) any appeal pursuant to section 24 of the 1974 Act incurred from the date that a notice of appeal has been received by the Secretary of Tribunals pursuant to, in England and Wales, the Employment Tribunals (Constitution and Rules of Procedure) Regulations 1993(5)

(5) S.I. 1993/2687, amended by S.I. 1994/538 and 1996/1758. The title of these Regulations, formerly the "Industrial Tribunals (Constitution and Rules of Procedure) Regulations 1993" was amended by operation of section 1 of the Employment Rights (Dispute Resolution) Act 1998 c. 8.

and, in Scotland, the Employment Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 1993⁽⁶⁾.

(7) In this regulation “inspector” means a person appointed by the Executive under section 19 of the 1974 Act and “authorised person” means a person authorised by the Agency under section 108 of the Environment Act 1995.

(6) S.I. [1993/2688](#), amended by S.I. [1994/538](#) and [1996/1758](#). The title of these Regulations, formerly the “Industrial Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 1993” was amended by operation of section 1 of the Employment Rights (Dispute Resolution) Act [1998 c. 8](#).