

2014 No. 3318

CLEAN AIR, ENGLAND

**The Clean Air (Miscellaneous Provisions) (England)
Regulations 2014**

<i>Made</i>	- - - -	<i>15th December 2014</i>
<i>Laid before Parliament</i>		<i>17th December 2014</i>
<i>Coming into force</i>	- -	<i>7th January 2015</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 1(3) (as applied by section 44), 7(1), 14(7), 36(6), 37(3), 38(1), (3)(a) to (d), (4) and 63(1) of the Clean Air Act 1993(a).

In accordance with sections 37(4) and 38(2) of that Act, the Secretary of State has consulted such persons as appear to her—

- (a) to represent local authorities,
- (b) to represent industrial interests, and
- (c) to be conversant with problems of air pollution,

as she considers appropriate.

Citation, commencement, application and interpretation

2.—(1) These Regulations may be cited as the Clean Air (Miscellaneous Provisions) (England) Regulations 2014 and come into force on 7th January 2015.

(2) These Regulations apply in relation to England only.

(3) In these Regulations—

- (a) any reference to a section by number alone is a reference to the section of that number in the Clean Air Act 1993;
- (b) “section 36 notice” means a notice served by a local authority under section 36(b) requiring information about air pollution from an occupier of premises.

(a) 1993 c. 11. The functions of the Secretary of State under sections 1(3), 7(1), 14(7), 37(3), 38(1), (3)(a) to (d), (4) and 63(1) are, so far as exercisable in relation to Wales, vested in the Welsh Ministers. Those functions were transferred to the National Assembly for Wales constituted by the Government of Wales Act 1998 (c. 38) by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2; see the entry in Schedule 1 for the Clean Air Act 1993. By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32), they were transferred to the Welsh Ministers immediately after the end of the initial period as defined by section 161(5) of that Act.

(b) Section 36 was amended by S.I. 2000/1973 and 2013/755, and partially repealed by Schedule 3 to the Pollution Prevention and Control Act 1999 (c. 24).

PART 1

Dark smoke – permitted periods for emissions from vessels

Dark smoke – emissions from vessels

3.—(1) Emissions of dark smoke from a chimney of a vessel for not longer than the period specified in column 2 of Schedule 1 to these Regulations, in respect of the class of case specified in column 1 of that Schedule, are emissions to which section 1 (prohibition of dark smoke from chimneys) does not apply, provided that—

- (a) continuous emissions of dark smoke caused otherwise than by the soot blowing of a water tube boiler do not exceed—
 - (i) in the case of classes 1 and 2, 4 minutes;
 - (ii) in the case of natural draught oil-fired boiler furnaces in class 4, 10 minutes; and
- (b) in no case is black smoke emitted for more than 3 minutes in total in any period of 30 minutes.

(2) In paragraph (1)(b), “black smoke” means smoke which, if compared in the appropriate manner with a chart of the type known on 5th July 1956 (the date of the passing of the Clean Air Act 1956(a)) as the Ringelmann Chart(b), would appear to be as dark as or darker than shade 4 on the chart.

(3) For the purposes of Schedule 1, a vessel is not under way when it is at anchor or made fast to the shore or bottom, and a vessel which is aground is deemed to be under way.

PART 2

Arrestment plant - exemptions

Arrestment plant exemptions

4. A class of furnace listed in column 1 of Schedule 2 to these Regulations, while used for a purpose set out in column 2 in relation to that class, is exempted from the provisions of section 6(1) (which requires the fitting of arrestment plant to new non-domestic furnaces).

PART 3

Height of furnace chimneys - exemptions

Exempted boilers or plant

5.—(1) The purposes set out in paragraph (2) are prescribed purposes in relation to section 14(7) (section 14 relates to the height of chimneys serving furnaces connected with boilers or industrial plant, but exempts from certain of its provisions any chimney serving the furnace of a boiler or plant used or to be used wholly for a prescribed purpose).

(2) The purposes are—

- (a) temporarily replacing any other boiler or plant which is—
 - (i) under inspection, maintenance or repair;
 - (ii) being rebuilt; or
 - (iii) being replaced by a permanent boiler or plant;

(a) 1956 c. 52, repealed by Schedule 6 to the Clean Air Act 1993.

(b) The Ringelmann Chart British Standard 2742C:1957.

- (b) providing a temporary source of heat or power during any building operation or work of engineering construction (within the meaning of section 176(1) of the Factories Act 1961(a));
- (c) providing a temporary source of heat or power for investigation or research;
- (d) providing products of combustion to heat other plant (whether directly or indirectly) to an operating temperature;
- (e) providing heat or power by mobile or transportable plant for the purposes of agriculture (within the meaning of section 109(3) of the Agriculture Act 1947(b)).

PART 4

Information about air pollution

Section 36 notices concerning emissions from chimneys and other outlets

6. A section 36 notice may relate to the emission of pollutants and other substances from any chimney, flue or other outlet used for the discharge, from any premises to the atmosphere, of any emission of any of the following kinds—

- (a) sulphur dioxide or particulate matter derived from any combustion process where the material being heated does not contribute to the emission;
- (b) any gas or particulate matter derived from any combustion process where the material being heated contributes to the emission;
- (c) any gas or particulate matter derived from any non-combustion process or other similar industrial activity.

Information which may be required by a section 36 notice

7.—(1) Subject to paragraph (2), a section 36 notice must specify the premises to which it relates and may require the provision of estimates or other information, in respect of those premises, of any of the following kinds—

- (a) in relation to emissions of sulphur dioxide during any specified period—
 - (i) the total duration of all discharges from the specified premises during that period;
 - (ii) (aa) the temperature in degrees Celsius,
 - (bb) the efflux velocity in metres per second, and
 - (cc) the volume flow rates in cubic metres per hour,
 of the gases discharged from any specified chimney or flue or other specified outlet during that period, and the height in metres above ground level at which each such discharge takes place;
- (iii) the total quantity of sulphur dioxide discharged during that period, to be ascertained, in the case of sulphur dioxide derived from a combustion process, either by calculation from the quantity of fuel or other matter burnt and its sulphur content, or, if the occupier of the premises and the local authority so agree, by direct measurement;
- (b) in relation to total emissions of particulate matter of all kinds during any specified period—
 - (i) the total duration of all discharges from the specified premises during that period;
 - (ii) (aa) the temperature in degrees Celsius,

(a) 1961 c. 34; section 176(1) was amended by S.I. 1996/1592; there are other amendments but none is relevant.

(b) 1947 c. 48; there are no relevant amendments.

- (bb) the efflux velocity in metres per second, and
 - (cc) the volume flow rates in cubic metres per hour,
- of the gases discharged from any specified chimney or flue or other specified outlet during that period, and the height in metres above ground level at which each such discharge takes place;
- (iii) the average concentration of particulates in the gases discharged during that period in grams per cubic metre at standard temperature and pressure (that is to say, a temperature of 15 degrees Celsius and a barometric pressure of one bar);
 - (iv) the total quantity of particulates discharged during that period;
- (c) in relation to emissions of gas other than sulphur dioxide or emissions of any specified particulate matter during any specified period—
- (i) the total duration of all discharges from the specified premises during the period;
 - (ii) (aa) the temperature in degrees Celsius,
 - (bb) the efflux velocity in metres per second, and
 - (cc) the volume flow rates in cubic metres per hour,
- of the gases discharged from any specified chimney or flue or other specified outlet during that period, and the height in metres above ground level at which each such discharge takes place;
- (iii) the average concentration of specified pollutants in the discharges made during the period;
 - (iv) the total quantity of specified pollutants discharged during the period.

(2) Where a section 36 notice relates to an emission which has taken place before the giving of the notice, it may not require information of a kind prescribed by paragraph (1) concerning that emission, except and insofar as that information is in the possession of the occupier of the specified premises or immediately available to that occupier.

(3) In this regulation, “specified”, in respect of any matter to which a section 36 notice relates, means specified in the relevant notice.

Provisions relating to section 36 notices

8.—(1) A notice served by post pursuant to section 233 of the Local Government Act 1972(a) (service of notices by local authorities) must be sent in a prepaid letter by recorded delivery.

(2) A document purporting to be a copy of a notice signed by the proper officer of a local authority, and bearing a certificate purporting to be signed by the proper officer as to the date when and the person upon whom the notice was served, is evidence that a notice in the terms of the copy was duly authorised to be given by the local authority and was served in accordance with the facts stated in the certificate.

(3) In this regulation “proper officer” means an officer appointed by a local authority for the purposes of Part 5 of the Clean Air Act 1993 and includes any person authorised to act in that behalf by an officer so appointed.

Appeals

9.—(1) An appeal made under section 37(1) (appeals against notices under section 36) must be made by notice in writing given to the Secretary of State.

(a) 1972 c. 70; section 233 was amended by Schedule 2 to the Local Government (Miscellaneous Provisions) Act 1976 (c. 57), section 84 of, and paragraph 29 of Schedule 14 to, the Local Government Act 1985 (c. 51), Part 1 of Schedule 13 to the Education Reform Act 1988 (c. 40), paragraph 14(d) of Schedule 4 to the Police and Magistrates’ Courts Act 1994 (c. 29), paragraphs 22 and 31(d) of Schedule 6, and Part 5 of Schedule 7, to the Criminal Justice and Police Act 2001 (c. 16), paragraphs 1 and 21 of Schedule 13 to the Local Government and Public Involvement in Health Act 2007 (c. 28), paragraphs 10 and 32 of Schedule 6 to the Local Democracy, Economic Development and Construction Act 2009 (c. 20) and paragraphs 100 and 114 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13).

(2) An appeal may only be made during the period allowed for compliance with the notice, to be determined in accordance with section 36(4).

(3) A notice of appeal under paragraph (1) must—

- (a) be submitted in duplicate;
- (b) state the grounds of the appeal by specifying the paragraph or paragraphs of section 37(1) under which the appeal is made, that is to say by specifying paragraph (a)(i), (a)(ii) or (b);
- (c) be accompanied—
 - (i) in respect of each paragraph so specified in accordance with sub-paragraph (b), by a statement of the facts and reasons on which the appeal, or that part of the appeal, is based;
 - (ii) by a copy of the notice served under section 36 to which the appeal relates; and
 - (iii) by a copy of any other relevant documents.

(4) Subject to paragraph (5), the Secretary of State must send to the local authority a copy of the notice of appeal and of any other document submitted by the appellant under this regulation.

(5) Where paragraph (6) applies, the Secretary of State must withhold from the local authority—

- (a) any statement provided under paragraph (3)(c)(i) in respect of any appeal made under paragraph (a)(i) or (a)(ii) of section 37(1); and
- (b) any other document provided by the appellant which contains such information.

(6) This paragraph applies if the Secretary of State determines that the disclosure of any information given by the appellant would—

- (a) prejudice to an unreasonable degree any private interest relating to a trade secret, or
- (b) be contrary to the public interest.

(7) The Secretary of State may, if the Secretary of State thinks fit, require the appellant or the local authority to submit within a specified period a further statement in writing in respect of any of the matters to which the appeal relates.

(8) If, after considering the grounds of the appeal and any further statement provided under paragraph (7), the Secretary of State is satisfied that there is sufficient information for the purpose of reaching a decision as to the matters to which the appeal relates, the Secretary of State may decide the appeal without further investigation.

(9) If the Secretary of State does not decide the appeal as described in paragraph (8), the Secretary of State must (except in a case where the Secretary of State causes a local inquiry to be held under section 59 (inquiries)(a)), if either party wishes it, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for that purpose.

Registers of information

10. A local authority must maintain a register of information in pursuance of these Regulations, and any such register must be adequately indexed so as to enable information relating to particular premises to be located and must contain—

- (a) (i) the information obtained by the authority by virtue of section 35(1) (obtaining information), or
- (ii) if the Secretary of State has directed under section 37(2) in relation to any information that it must not be disclosed, the fact that the Secretary of State has so directed, and
- (b) in relation to any appeal under section 37 against a section 36 notice served by the authority, being an appeal which the Secretary of State did not dismiss, the date, grounds and result of the appeal.

(a) Section 59 was amended by section 120 of, and paragraph 197 of Schedule 22 to, the Environment Act 1995 (c. 25).

Exempted Crown premises

11. Section 36 does not apply to any premises used for the public service of the Crown which are—

- (a) named or described in column 1 of Schedule 3 to these Regulations; and
- (b) situated at an address or location specified in respect of that name or description in column 2 of that Schedule.

PART 5

Revocations

Revocations

12. The Regulations specified in Schedule 4 to these Regulations are revoked(a).

15th December 2014

Dan Rogerson
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

SCHEDULE 1

Regulation 3(1)

<i>(1)</i> Class of case	<i>(2)</i> Permitted period for emission of dark smoke
1. Emissions from a forced draught oil-fired boiler furnace, or an oil engine	10 minutes in total in any period of 2 hours
2. Emissions from a natural draught oil-fired boiler furnace (except in the cases falling within class 4)	10 minutes in total in any period of 1 hour
3. Emissions from a coal-fired boiler furnace— (a) when the vessel is not under way (except in the cases falling within class 4); (b) when the vessel is under way	10 minutes in total in any period of 1 hour 20 minutes in total in any period of 1 hour
4. Emissions from a natural draught oil-fired boiler furnace or a coal-fired boiler furnace in the following cases— (a) a vessel with funnels shortened for the purpose of navigating the Manchester Ship Canal; (b) a tug not under way, but preparing to get under way or supplying power to other vessels or to shore installations; (c) a vessel not under way but using main	20 minutes in total in any period of 1 hour

(a) The regulations specified in Schedule 4 were all made under legislation which was repealed and re-enacted by the Clean Air Act 1993, and so had effect as if they were made under the Clean Air Act 1993 by virtue of section 17 of the Interpretation Act 1978 (c. 30).

power for the purpose of dredging, lifting, pumping or performing some other special operation for which the vessel is designed	
5. Emissions from any other source	5 minutes in total in any period of 1 hour

SCHEDULE 2

Regulation 4

Exempted furnaces

(1) <i>Class of furnace</i>	(2) <i>Purpose</i>
1. Mobile or transportable furnaces	(a) Providing a temporary source of heat or power during any building operation or work of engineering construction (within the meaning of section 176 of the Factories Act 1961); (b) providing a temporary source of heat or power for investigation or research; (c) providing heat or power for the purposes of agriculture (within the meaning of section 109(3) of the Agriculture Act 1947)
2. Furnaces, other than furnaces designed to burn solid matter at a rate of 0.989 tonne an hour (or 989 kilogram an hour) or more, which fall within any of the following descriptions and in which the matter being heated does not contribute to the emission of grit and dust— (a) furnaces burning liquid matter, gas, or liquid matter and gas; (b) hand-fired sectional furnaces designed to burn solid matter at a rate of not more than 122 kilogram/square meter/hour of grate surface; (c) magazine type gravity-fed furnaces designed to burn solid matter at a rate of not more than 122 kilogram/square meter/hour of grate surface; (d) furnaces fitted with an under-feed stoker designed to burn solid matter at a rate of not more than 122 kilogram/square meter/hour of the plan area of the combustion chamber; (e) furnaces fitted with a chain grate stoker designed to burn solid matter at a rate of not more than 122 kilogram/square meter/hour of grate surface; (f) furnaces fitted with a coking stoker designed to burn solid matter at a rate of not more than 122 kilogram/square meter/hour of the area covered by the fire bars excluding the solid coking plate	Any purpose except the incineration of refuse

SCHEDULE 3

Regulation 11

Premises to which section 36 does not apply

(1) <i>Name or description of premises</i>	(2) <i>Address or location</i>
Atomic Weapons Establishment	Aldermaston, Reading, Berkshire Burghfield, Reading, Berkshire
Defence Science and Technology Laboratory	Alverstoke, Gosport, Hampshire Fort Halstead, Sevenoaks, Kent Porton Down, Salisbury, Wiltshire Portsmouth West, Fareham, Hampshire
Her Majesty's Naval Base Devonport	Plymouth, Devon
Her Majesty's Naval Base Portsmouth	Portsmouth, Hampshire
Ministry of Defence Eskmeals	Eskmeals, Cumbria
Ministry of Defence Larkhill	Larkhill, Wiltshire
Royal Air Force Spadeadam	Spadeadam, Gilsland, Carlisle

SCHEDULE 4

Regulation 12

Schedule of revocations

<i>Regulations revoked</i>	<i>References</i>
The Dark Smoke (Permitted Periods) (Vessels) Regulations 1958	S.I. 1958/878
The Clean Air (Height of Chimneys) (Exemption) Regulations 1969	S.I. 1969/411
The Clean Air (Arrestment Plant) (Exemption) Regulations 1969	S.I. 1969/1262
The Control of Atmospheric Pollution (Appeals) Regulations 1977	S.I. 1977/17
The Control of Atmospheric Pollution (Exempted Premises) Regulations 1977	S.I. 1977/18
The Control of Atmospheric Pollution (Research and Publicity) Regulations 1977	S.I. 1977/19

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate six sets of regulations concerning clean air, made under enabling powers which were repealed and re-enacted as part of the Clean Air Act 1993 (c. 11) ("the Act").

Section 1 of the Act, as applied by section 44 of that Act, makes it an offence to emit dark smoke (as defined) from the chimney of a vessel, but under subsection (3) of that section the Secretary of State may prescribe in regulations that section 1 does not apply to emissions of smoke lasting for not longer than such periods as may be prescribed. Regulation 2 and Schedule 1 contain the prescribed classes of emissions and permitted periods of time.

The Ringelmann Chart mentioned in regulation 2(2) is derived from BS 2742M. Documents can be obtained from the British Standards Institution online at www.bsigroup.com, or hard copies can

be obtained from the British Standards Institution customer services at 389 Chiswick High Road, London, W4 4AL upon payment of a fee.

Section 6(1) of the Act requires that new non-domestic furnaces must be provided with plant approved by the local authority for arresting grit and dust. Section 7(1) permits the Secretary of State by regulations to provide that furnaces of any class prescribed in the regulations, while used for a prescribed purpose, be exempted from the effect of section 6(1). Regulation 3 and Schedule 2 contain the prescribed classes of furnace and purposes.

Section 14(2) of the Act requires that a furnace in a building must not be used for certain purposes unless the height of the chimney serving the furnace has been approved by the local authority or the Secretary of State under section 15 of the Act, and any conditions to which the approval was subject have been complied with. However, if a boiler or plant is used or is to be used wholly for a purpose prescribed by the Secretary of State under section 14(7), it is an exempted boiler or plant and approval for the height of the chimney need not be obtained. Regulation 4 contains the prescribed purposes, which include temporary or local provision of heat or power during replacement or maintenance, building operations, engineering construction, investigation or research, and agricultural operations.

Section 36 of the Act empowers a local authority by notice to require the occupier of any premises (but not private dwellings) to provide information concerning the emission of pollutants and other substances into the air from the premises. Regulation 5 prescribes the kinds of emissions to which notices under section 36 may relate, regulation 6 prescribes the kinds of information which may be required by those notices, and regulation 7 prescribes the manner in which such notices are to be sent by post and the evidence which is to be sufficient evidence that such a notice has been given (see section 38(1), (3)(a) to (c) and (4) of the Act).

Any person who has an interest in the premises may appeal against such a notice to the Secretary of State under section 37 of the Act. Regulation 8(1) to (3) prescribes the manner in which an appeal under section 37 is to be made, and the time within which it may be brought. Regulation 8(4) to (6) specifies the circumstances in which the Secretary of State is required to withhold certain parts of the appellant's case from the respondent local authority, and the documents which the Secretary of State is otherwise required to send to the authority. Regulation 8(7) to (9) prescribes the procedure to be followed before the Secretary of State determines an appeal.

Regulation 9 requires each local authority to maintain a register containing information concerning emissions from premises which has been obtained by the authority under section 35 of the Act (other than information which, by direction of the Secretary of State, is not to be disclosed) and information concerning certain appeals against section 36 notices (see section 38(1) and (3)(d) of the Act).

Section 36(6) of the Act empowers the Secretary of State to prescribe in regulations certain premises used in the public service of the Crown to which section 36 is not to apply. Regulation 10 and Schedule 3 contain the Crown premises that are prescribed.

An impact assessment has not been produced for this instrument as no impact is foreseen on the private, voluntary or public sectors. An Explanatory Memorandum is published alongside the instrument on www.legislation.gov.uk.

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£6.00

UK2014121658 12/2014 19585

<http://www.legislation.gov.uk/id/uksi/2014/3318>

ISBN 978-0-11-112601-1



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