STATUTORY INSTRUMENTS

2010 No. 675

The Environmental Permitting (England and Wales) Regulations 2010

PART 6

Powers and functions of the regulator and the appropriate authority

Power of the regulator to prevent or remedy pollution

57.—(1) If the regulator considers that the operation of a regulated facility under an environmental permit involves a risk of serious pollution, it may arrange for steps to be taken to remove that risk.

(2) The regulator may arrange for steps to be taken to remedy the effects of pollution if—

(a) the commission of an offence under regulation 38(1), (2) or (3) causes pollution; or

(b) the regulator suspects that an offence under that regulation is being or has been committed and that pollution is being or has been caused as a result.

(3) If the regulator intends to arrange for steps to be taken under paragraph (2), it must notify the operator of the steps not less than 5 working days before they are taken.

(4) If the regulator arranges for steps to be taken under this regulation, it may recover the cost of taking those steps from the operator.

(5) But costs are not recoverable under paragraph (4)—

(a) if the steps referred to in paragraph (1) are taken and the operator shows that there was no risk of serious pollution; or

(b) to the extent that the operator shows that the costs were unnecessarily incurred by the regulator.

Environment Agency: notices in relation to emissions to water

58.—(1) This regulation applies to Part A installations and Part A mobile plant for which a local authority is the regulator.

(2) At any time the Agency may give notice to the local authority specifying the emission limit values or the conditions it considers appropriate for preventing or reducing emissions into water from the installation or mobile plant.

(3) If such a notice is issued, the local authority must exercise its functions under these Regulations to ensure the environmental permit for the installation or mobile plant includes—

(a) the emission limit values or conditions specified in the notice; or

(b) such stricter limit values or more onerous conditions as the authority thinks fit.

(4) In this regulation, "emission limit value" means the mass, expressed in terms of specific parameters, concentration or level of an emission, which must not be exceeded during a period of time.

Environment Agency: public participation statement

59.—(1) The Agency must prepare and publish a statement of its policies for complying with its public participation duties.

(2) In preparing or revising the statement the Agency must consult such persons as it considers are affected by, are likely to be affected by, or have an interest in, the statement.

(3) The Agency must—

(a) keep the statement under review;

(b) revise the statement when it considers necessary; and

(c) publish any revised statement.

(4) The Agency must comply with any published statement when exercising its functions under the public participation provisions.

(5) The duty in paragraph (2) may be satisfied by a consultation carried out partially or wholly before the coming into force of these Regulations.

(6) In this regulation, "public participation duties" means the duties in the following provisions—

(a) regulation 26;

(b) regulation 29;

(c) paragraphs 6 and 8(2) of Part 1 of Schedule 5.

Power to require the provision of information

60.—(1) For the purposes of discharging its functions under these Regulations, an appropriate authority, regulator or exemption registration authority, by notice served on any person, may require that person to provide such information in such form and within such period as is specified in the notice.

(2) A notice under paragraph (1) may require a person to provide any information on emissions where that requirement is reasonable, including the provision of information—

(a) not in the person's possession; and

(b) which would not usually come into the person's possession.

(3) For the purposes of this regulation the discharge by the appropriate authority of—

(a) an obligation of the United Kingdom under the Community Treaties; or

(b) an international obligation of the United Kingdom,

must be treated as a function of the authority under these Regulations.

(4) For the purposes of this regulation the compilation of an inventory of emissions (whether or not from a regulated facility) must be treated as a function of the regulator under these Regulations.

Directions to regulators and exemption registration authorities: general

61.—(1) An appropriate authority may give directions to a regulator or exemption registration authority of a general or specific character with respect to the carrying out of its functions under these Regulations.

(2) Without prejudice to the generality of the power in paragraph (1), a direction may direct the regulator or exemption registration authority to exercise or not to exercise—

(a) specified powers;

(b) its powers in specified circumstances; or

(c) its powers in a specified manner.

(3) Except in an emergency, an appropriate authority may give a direction to the Agency under paragraph (1) only after consultation with the Agency**.**

(4) The regulator or exemption registration authority must comply with a direction given to it under these Regulations.

Reference of applications to an appropriate authority

62.—(1) An appropriate authority may give directions to a regulator requiring that a particular application or class of application be referred to it for determination.

(2) The regulator must—

(a) inform the applicant of the fact that the application is being referred to the appropriate authority; and

(b) forward to the appropriate authority any representations made in respect of the application.

(3) When an application is referred to an appropriate authority, the appropriate authority—

(a) may afford the applicant and the regulator an opportunity of appearing before and being heard by a person appointed by the appropriate authority, and

(b) must do so in any case where a request is duly made by the applicant or the regulator to be so heard.

(4) A request under paragraph (3)(b) must be made in writing within 15 working days after the day on which the applicant is informed that the application is being referred to the appropriate authority.

(5) A hearing under paragraph (3) is subject to paragraphs 5(2) to (6) and 6 of Schedule 6 (except paragraph 5(3)(c)) as if it were a hearing under paragraph 5(1) of that Schedule with the following modifications—

(a) "the appellant" is to be read as "the applicant";

(b) "the appeal" is to be read as "the application".

(6) On determining an application referred to it under this regulation the appropriate authority must give to the regulator a direction as to whether the regulator is to grant the application and, if so, the conditions that are to be attached to the environmental permit.

(7) In this regulation, "application" means an application—

(a) for the grant of an environmental permit, or

(b) for the variation of an environmental permit.

Directions to the Agency: installations outside the United Kingdom

63.—(1) This regulation applies where an appropriate authority receives information pursuant to Article 18(1) of the IPPC Directive in relation to the operation of an installation outside the United Kingdom which is likely to have a significant negative effect on the environment of England or Wales.

(2) For the purpose of complying with Article 18(2) of the IPPC Directive, the appropriate authority must direct the Agency to take such steps as it considers appropriate to—

(a) bring the information to the attention of persons likely to be affected by the operation of the installation; and

(b) provide them with an opportunity to comment on the information.

Guidance to regulators and exemption registration authorities

64.—(1) An appropriate authority may issue guidance to a regulator or exemption registration authority with respect to the exercise of its functions under these Regulations.

(2) In the exercise of those functions the regulator or exemption registration authority must have regard to the guidance.

Fees and charges in relation to the exercise of regulator's functions by local authorities

65.—(1) An appropriate authority may make, and from time to time revise, a scheme prescribing—

(a) fees payable to a regulator in respect of applications—

(i) for the grant of an environmental permit,

(ii) for the variation of an environmental permit,

(iii) for the transfer of an environmental permit in whole or in part,

(iv) for the surrender of an environmental permit in whole or in part;

(b) fees payable to a regulator in respect of a regulator-initiated variation; and

(c) charges payable to a regulator in respect of the subsistence of an environmental permit.

(2) A scheme may in particular—

(a) prescribe specific fees and charges or the methods by which they are to be calculated;

(b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities;

(c) subject to the requirements of these Regulations, provide for the time when, and the manner in which, payments required by the scheme are to be made; and

(d) make such incidental, supplementary and transitional provision as appears necessary or expedient to the appropriate authority.

(3) In making or revising a scheme, so far as practicable the appropriate authority must ensure that the fees and charges payable are sufficient to cover expenditure by a regulator—

(a) in exercising its functions under these Regulations;

(b) in making payment to any person who prepares guidance in relation to an installation or mobile plant that is—

(i) mentioned in regulation 32(2), or

(ii) specified in a direction under regulation 33;

(c) in making payment to the Agency in relation to the exercise of the Agency's functions under regulation 58.

(4) A scheme must provide for the payment of sums by the regulator to the Agency where those sums are related to expenditure by the Agency under regulation 58 or in preparing guidance referred to in paragraph (3)(b).

(5) If a regulator considers that an operator has failed to pay a charge specified in a scheme in respect of the subsistence of the operator's permit, the regulator may revoke or suspend the permit.

(6) A revocation or suspension must be by way of notice served under regulation 22(3) or regulation 37.

(7) In this regulation, "regulator" means a local authority on which functions are conferred by regulation 32 or by a direction under regulation 33.

Plans relating to emissions

66.—(1) Subject to paragraph (3), an appropriate authority may make plans for—

(a) the setting of limits on the total amount, or the total amount in any period, of emissions from all or any description of source; or

(b) the allocation of quotas relating to such emissions.

(2) If the appropriate authority allocates a quota in a plan made under paragraph (1) it may also make a scheme for the trading or other transfer of that quota.

(3) This regulation does not apply to an emission plan.

(4) In this regulation—

"emission" means the direct or indirect release of any substance from individual or diffuse sources into the air, water or land; and

"emission plan" has the meaning given in the Large Combustion Plants (National Emission Reduction Plan) Regulations 2007(**1**).

(**1**) S.I. 2007/2325.