
STATUTORY INSTRUMENTS

2015 No. 310

The Fluorinated Greenhouse Gases Regulations 2015

PART 4

Enforcement

Enforcement

20.—(1) The enforcing authority must enforce these Regulations.

(2) In relation to cases of a particular description, or a particular case—

- (a) the Secretary of State may, as regards England, direct that the duty in paragraph (1) is to be discharged by the Secretary of State and not by another enforcing authority;
- (b) the Welsh Ministers may, as regards Wales, direct that the duty in paragraph (1) is to be discharged by the Welsh Ministers and not by another enforcing authority;
- (c) the Scottish Ministers may, as regards Scotland, direct that the duty in paragraph (1) is to be discharged by the Scottish Ministers and not by another enforcing authority;
- (d) the Department of the Environment may, as regards Northern Ireland, direct that the duty in paragraph (1) is to be discharged by the Department of the Environment and not by another enforcing authority.

(3) Where the Secretary of State is the enforcing authority or makes a direction under paragraph (2), the Secretary of State may delegate to the Director of Public Prosecutions functions in relation to the prosecution of an offence under these Regulations in England.

Appointment of authorised persons

21.—(1) The enforcing authority may authorise in writing such persons (“authorised persons”) as it considers appropriate to act for the purpose of enforcing these Regulations.

(2) An authorisation under any of the following is an authorisation for the purposes of these Regulations—

- (a) section 108 of the Environment Act 1995⁽¹⁾ (powers of enforcing authorities and persons authorised by them);
- (b) Article 19 of the Environment (Northern Ireland) Order 2002⁽²⁾ (powers of enforcing authorities and persons authorised by them).

(3) An authorisation under any of the following is an authorisation for the purposes of paragraph (1), unless the Secretary of State specifies to the contrary—

(1) 1995 c. 25. Section 108 is amended by Schedule 3 to the Pollution Prevention and Control Act 1999 (c. 24), section 55(7) to (9) of the Anti-social Behaviour Act 2003 (c. 38), section 53 of the Clean Neighbourhoods and Environment Act 2005 (c. 16), paragraph 3 of Part 1 of Schedule 2 to the Protection of Freedoms Act 2012 (c. 9), section 46(2) of, and paragraph 5(3) of Part 1 of Schedule 3, and paragraph 43(1) and (10)(a) of Part 6 of Schedule 3 to, the Regulatory Reform (Scotland) Act 2014 (asp 3), by S.I. 2000/1973, 2010/675 and 2013/755, and by S.S.I. 2000/323 and 2006/181.

(2) S.I. 2002/3153 (N.I. 7).

- (a) regulation 16 of the Offshore Chemicals Regulations 2002⁽³⁾ (appointment of inspectors);
- (b) regulation 12 of the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005⁽⁴⁾ (inspectors).

Powers of authorised persons

22.—(1) An authorised person may, on production (if so required) of the authority of that person, exercise any of the powers specified in paragraph (2) for the purpose of enforcing these Regulations.

(2) The powers of an authorised person are—

- (a) subject to paragraph (3), to enter premises between the hours of 8 a.m. and 6 p.m. on any working day, other than premises used wholly or mainly for residential purposes, which the authorised person has reason to believe it is necessary for the authorised person to enter;
- (b) on entering any premises by virtue of sub-paragraph (a), to take with the authorised person—
 - (i) up to four other persons whose presence appears to the authorised person to be required in connection with the exercise by the authorised person of any power under this regulation, including, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of the duty of the authorised person, a constable; and
 - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
- (c) to make such examination or investigation as may in any circumstances be necessary;
- (d) as regards any premises which the authorised person has power to enter, to direct that those premises or any part of them, or anything in them, must be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any examination or investigation under sub-paragraph (c);
- (e) to take such measurements and photographs and make such recordings as the authorised person considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (f) to take samples of any articles or substances found in or on any premises which the authorised person has power to enter;
- (g) in the case of any article or substance found in or on any premises which the authorised person has power to enter, being an article or substance which appears to the authorised person to have caused or to be likely to cause pollution of the environment or harm to human health or to the health of animals or plants, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless that is necessary);
- (h) in the case of any such article or substance, to take possession of it and detain it for so long as is necessary for all or any of the following purposes—
 - (i) to examine it and do to it anything which the authorised person has power to do under sub-paragraph (g);
 - (ii) to ensure that it is not tampered with before the examination by the authorised person is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations;

⁽³⁾ S.I. 2002/1355, amended by S.I. 2005/2055 and 2011/982. There are other amendments not relevant to this instrument.

⁽⁴⁾ S.I. 2005/2055, amended by S.I. 2011/983. There are other amendments not relevant to this instrument.

- (i) to require any person whom the authorised person has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of anyone, other than someone nominated by that person to be present and anyone whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of the answers of that person;
 - (j) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which it is necessary for the authorised person to see for the purposes of any examination or investigation under sub-paragraph (c) and to inspect and take copies of, or of any entry in, the records;
 - (k) to require any person to afford the authorised person such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on the authorised person by this regulation.
- (3) The time limitation specified in paragraph (2)(a) does not apply in relation to offshore installations, Scottish offshore installations or Northern Ireland offshore installations.
- (4) Where an authorised person proposes to exercise the power conferred by paragraph (2)(g) in the case of an article or substance, the authorised person must, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.
- (5) Before exercising the power conferred by paragraph (2)(g) in the case of any article or substance, an authorised person must consult such persons as appear to the authorised person appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which the authorised person proposes to do under the power.
- (6) Where under the power conferred by paragraph (2)(h) an authorised person takes possession of any article or substance found on any premises, the authorised person must—
- (a) leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that the authorised person has taken possession of it under that power; and
 - (b) before taking possession of any such article or substance under that power, if it is practical to do so, take a sample of it and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.
- (7) Nothing in this regulation is taken to compel the production by any person of a document which the person would be entitled to withhold production of on grounds of—
- (a) legal professional privilege on an order for disclosure and inspection in an action in the High Court; or
 - (b) confidentiality in proceedings in the Court of Session in Scotland.
- (8) No person may intentionally prevent any other person from appearing before an authorised person under paragraph (2)(i) or from answering any question to which an authorised person may by virtue of paragraph (2)(i) require an answer.
- (9) No answer given by a person in pursuance of a requirement imposed under paragraph (2)(i) is admissible in evidence in England, Wales, Scotland or Northern Ireland against that person in any proceedings.
- (10) In paragraph (2)(a), “working day” means a day which is not—
- (a) Saturday or Sunday; or

- (b) Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971⁽⁵⁾ in the part of the United Kingdom in which the premises are situated.

Warrants

23.—(1) A justice of the peace, in Scotland a stipendiary magistrate or a sheriff, or in Northern Ireland a lay magistrate, may, by signed warrant, permit an authorised person to enter premises, if necessary by reasonable force, if satisfied, on sworn information in writing, that—

- (a) there are reasonable grounds to enter those premises for the purpose of enforcing these Regulations; and
 - (b) any of the conditions in paragraph (2) are met.
- (2) The conditions are—
- (a) entry to the premises has been, or is likely to be, refused, and notice of the intention to apply for a warrant has been given to the occupier;
 - (b) asking for entry to the premises, or giving such a notice, would defeat the object of the entry;
 - (c) entry is required urgently; or
 - (d) the premises are unoccupied or the occupier is temporarily absent.
- (3) A warrant under this regulation is valid for three months.

Information notices

24. An authorised person may, by notice served on any person, require that person to furnish such information as is specified in the notice, in such form and within such period following the service of the notice or at such time as is so specified.

Enforcement notices

- 25.**—(1) An authorised person may serve an enforcement notice on any person who—
- (a) in the opinion of the authorised person, fails to, or is likely to fail to, comply with—
 - (i) a provision of the 2014 Regulation specified in Schedule 2; or
 - (ii) a provision of the Commission Regulations specified in Schedule 3, read in association with Part 3 of these Regulations;
 - (b) submits a report under Article 19 of the 2014 Regulation which is not submitted in accordance with Commission Regulation 1191/2014;
 - (c) fails, where labelling for products and equipment is required under Article 12 of the 2014 Regulation, to comply with any of the following requirements of Commission Regulation 1494/2007—
 - (i) Article 2 (labelling requirements);
 - (ii) Article 3 (form of the label);
 - (iii) Article 4(2) (placing of the label for air conditioning equipment and heat pumps);
 - (d) fails to comply with a requirement under regulation 18;
 - (e) fails to comply with a requirement under regulation 19; or

(5) 1971 c. 80. See section 1 and Schedule 1, which was amended by section 1 of the St. Andrew's Day Bank Holiday (Scotland) Act 2007 (asp 2).

- (f) fails to comply with an information notice served under regulation 24.
- (2) An authorised person may serve an enforcement notice on a person qualified in relation to fire protection systems who fails to comply with any of the following requirements of Commission Regulation 1497/2007—
- (a) Article 3 (checking system records);
 - (b) Article 4(1) (visual checks by certified personnel);
 - (c) Article 4(2) (checks in cases of presumed leakage);
 - (d) Article 6 (follow-up check).
- (3) An authorised person may serve an enforcement notice on an operator of a fire protection system who—
- (a) fails to comply with any of the following requirements of Commission Regulation 1497/2007—
 - (i) Article 2(1) (system records);
 - (ii) Article 2(3) (determination of gas charge by certified personnel);
 - (b) fails to ensure that Article 2(2) of Commission Regulation 1497/2007 (indication of gas charge) is complied with; or
 - (c) fails to ensure that the following requirements of Commission Regulation 1497/2007 are carried out by a person qualified in relation to fire protection systems—
 - (i) Article 4(4) (checking of pressure gauges and weight-monitoring devices);
 - (ii) Article 5 (repair of leakage);
 - (iii) Article 7 (requirements for newly commissioned systems).
- (4) Subject to paragraph (6), an authorised person may serve an enforcement notice on a person qualified in relation to stationary equipment who fails to comply with any of the following requirements of Commission Regulation 1516/2007—
- (a) Article 3 (checking equipment records);
 - (b) Article 4 (systematic checks);
 - (c) Article 5 (choice of measuring method);
 - (d) Article 6 (direct measuring methods);
 - (e) Article 7(1) (indirect measuring methods);
 - (f) Article 7(2) (examination using a direct method);
 - (g) Article 9 (follow-up check).
- (5) Subject to paragraph (6), an authorised person may serve an enforcement notice on an operator of stationary equipment who—
- (a) fails to comply with any of the following requirements of Commission Regulation 1516/2007—
 - (i) Article 2(1) (equipment records);
 - (ii) Article 2(3) (determination of gas charge by certified personnel);
 - (b) fails to ensure that the following requirements of Commission Regulation 1516/2007 are complied with—
 - (i) Article 2(2) (indication of gas charge);
 - (ii) Article 2(4) (indication of leakage cause); or
 - (c) fails to ensure that the following requirements of Commission Regulation 1516/2007 are carried out by a person qualified in relation to stationary equipment—

- (i) Article 8 (repair of leakage);
 - (ii) Article 10 (requirements for newly commissioned equipment).
- (6) Paragraphs (4) and (5) do not apply in respect of equipment with a hermetically sealed system which—
- (a) is labelled as having such a system; and
 - (b) contains less than 6 kilograms of fluorinated greenhouse gases.
- (7) An enforcement notice must—
- (a) specify the matters constituting the failure to comply or those making a failure to comply likely;
 - (b) specify the steps that must be taken to remedy or avert the failure to comply;
 - (c) specify the period in which those steps must be taken;
 - (d) provide information on the right to appeal under regulation 26; and
 - (e) state that it is an offence under regulation 29(1)(e) to fail to comply with the enforcement notice.
- (8) An authorised person may at any time withdraw an enforcement notice.
- (9) A person on whom an enforcement notice is served must comply with it at their own expense.
- (10) If an enforcement notice is not complied with, the enforcing authority may arrange for it to be complied with at the expense of the person on whom it was served.
- (11) In this regulation—
- (a) “fire protection system” means a fire protection system, within the meaning given in Article 1 of Commission Regulation 1497/2007, containing 3 kilograms or more of fluorinated greenhouse gases;
 - (b) “person qualified in relation to fire protection systems” means an individual who—
 - (i) holds a certificate issued under Article 5 of Commission Regulation 304/2008 which relates to leakage checking of fire protection systems; or
 - (ii) is exempt from holding such a certificate by virtue of Article 4(2) of Commission Regulation 304/2008;
 - (c) “person qualified in relation to stationary equipment” means an individual who—
 - (i) holds a valid certificate issued under Article 5 of Commission Regulation 303/2008 which relates to leakage checking of stationary equipment;
 - (ii) is exempt from holding such a certificate by virtue of Article 4(3)(a) or (c) of Commission Regulation 303/2008; or
 - (iii) is exempt from holding such a certificate by virtue of Article 4(3)(b) of Commission Regulation 303/2008 where the person is suitably qualified for the purposes of 3.1.2 of the essential requirements in Schedule 2 to the Pressure Equipment Regulations 1999(6);
 - (d) “stationary equipment” means stationary refrigeration, air conditioning or heat pump equipment which contains three kilograms or more of fluorinated greenhouse gases.

Appeals against enforcement notices

- 26.—(1) A person who is aggrieved by an enforcement notice may appeal against it.
- (2) The right of appeal is to a magistrates’ court or, in Scotland, to the sheriff.

(6) S.I. 1999/2001, to which there are amendments not relevant to this instrument.

- (3) The procedure on appeal to a magistrates' court is—
 - (a) in England and Wales, by way of complaint, and the Magistrates' Courts Act 1980(7) applies to the proceedings;
 - (b) in Northern Ireland, by way of notice, and Part 7 of the Magistrates' Courts (Northern Ireland) Order 1981(8) applies to the proceedings.
- (4) An appeal to the sheriff is by summary application.
- (5) An appeal must be brought by no later than 28 days after the date on which the enforcement notice is served.
- (6) An enforcement notice is not suspended pending an appeal unless the court or sheriff orders otherwise.

Proceedings before a civil court

27.—(1) If the enforcing authority is of the opinion that proceedings against a person for an offence under regulation 29(1)(e) would afford an ineffectual remedy against that person, the enforcing authority may take civil proceedings against that person for the purposes of seeking such remedy as the enforcing authority believes is appropriate in the circumstances.

- (2) Civil proceedings under paragraph (1) may be taken—
 - (a) in the County Court or the High Court; or
 - (b) in Scotland, before the sheriff.

Powers of the Secretary of State, the Scottish Ministers and the Department of the Environment

28.—(1) This regulation applies where, in contravention of Article 11 of the 2014 Regulation, a person has imported into the United Kingdom from outside the customs territory of the EU a product or equipment containing, or whose functioning relies upon, fluorinated greenhouse gases.

- (2) The Secretary of State may require the person to, within a reasonable period of time—
 - (a) dispose of the product or equipment without causing pollution of the environment or harm to human health or the health of animals or plants;
 - (b) otherwise render it harmless; or
 - (c) remove it from—
 - (i) the United Kingdom;
 - (ii) an offshore installation; or
 - (iii) a Northern Ireland offshore installation.
- (3) The Scottish Ministers may require the person to, within a reasonable period of time, remove the product or equipment from a Scottish offshore installation.
- (4) The Department of the Environment may require the person to, within a reasonable period of time, remove the product or equipment from a Northern Ireland offshore installation used in connection with any of the activities described in regulation 4(4)(h) and (i).

(7) 1980 c. 43.

(8) S.I. 1981/1675 (N.I. 26).