STATUTORY RULES OF NORTHERN IRELAND

2009 No. 184

The Fluorinated Greenhouse Gases Regulations (Northern Ireland) 2009

PART 4

Enforcement, offences and penalties

Powers of authorised persons

42.—(1) An authorised person may, on production (if so required) of written authority, 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) at any reasonable time, to enter premises, other than premises used wholly or mainly for residential purposes, which the authorised person has reason to believe it is necessary for him to enter;

(b) on entering any premises by virtue of sub-paragraph (a), to take with the authorised person—

(i) any other person 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 powers under this regulation, 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 the power to enter, to direct that those premises or any part of 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 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 retain it for so long as is necessary—

(i) to examine it and do to it anything which the authorised person has the power to do under sub-paragraph (g),

(ii) to ensure that it is not tampered with before its examination is completed, or

(iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations;

(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;

(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 by this regulation.

(3) Where an authorised person proposes to exercise the power conferred by paragraph 2(g) in the case of an article or substance found in or on any premises, 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.

(4) 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 to be 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.

(5) 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 shall 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 before taking possession of any such substance under that power an authorised person must, if it is practical for him 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.

(6) Nothing in this regulation is to be taken to compel the production by any person of a document of which that person would on grounds of legal professional privilege be entitled to withhold production on an order for disclosure and inspection in an action in the High Court.

(7) 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.

(8) No answer given by a person in pursuance of a requirement imposed under paragraph (2)(i) may be admissible in evidence in Northern Ireland against that person in any proceedings.

Information notices

43. The enforcing authority 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 and prohibition notices

44.—(1) If the enforcing authority is of the opinion that a person has contravened, is contravening or is likely to contravene—

(a) Article 3.1 to 3.3, 3.6, 4 or 8;

(b) Article 9 (other than the prohibition on importation); or

(c) the second paragraph of Article 7.1,

the enforcing authority may serve on that person a notice (referred to in these Regulations as an "enforcement notice").

(2) An enforcement notice must—

(a) state that the enforcing authority is of that opinion;

(b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;

(c) specify the steps that must be taken to remedy the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be; and

(d) specify the period within which those steps must be taken.

(3) If the enforcing authority is of the opinion that the activities of a person, in relation to his contravention or likely contravention of—

(a) Article 3.1 to 3.3, 3.6, 4, 8; or

(b) Article 9 (other than the prohibition on importation),

are such that they involve an imminent danger of serious pollution of the environment, the enforcing authority may serve on that person a notice (referred to in these Regulations as a "prohibition notice").

(4) A prohibition notice must—

(a) state that the enforcing authority is of that opinion;

(b) specify the danger involved in the activity;

(c) specify the steps required to be taken to remove the danger; and

(d) require those steps to be taken within 3 days of the receipt of the notice.

(5) The period referred to in paragraph (2)(d) must not end earlier than the period within which an appeal may be brought under regulation 45.

(6) The enforcing authority may withdraw at any time an enforcement notice or a prohibition notice.

(7) A person on whom an enforcement notice or a prohibition notice is served must comply with such notice at that person's own expense.

(8) Where steps required by a notice have not been taken or not taken within the period allowed for compliance with the notice, the enforcing authority may—

(a) enter the land and take the steps specified in the notice; and

(b) recover from the person who is then the owner, any expenses reasonably incurred by it in doing so and those expenses shall be a civil debt recoverable summarily.

Appeals against enforcement or prohibition notices

45.—(1) A person who is aggrieved by an enforcement or a prohibition notice may appeal to a court of summary jurisdiction.

(2) The procedure on an appeal is by way of notice under Part VII of the Magistrates' Courts (Northern Ireland) Order 1981(**1**).

(3) The period within which an appeal may be brought is—

(a) 28 days from the date upon which the notice was issued; or

(b) in the case of a prohibition notice, such shorter period as may be specified in the notice.

(4) An enforcement notice or prohibition notice must state—

(a) that the person on whom the notice in question is served has the right of appeal; and

(b) the period in which the appeal may be brought.

(5) Where an appeal is brought against an enforcement notice, that notice must be of no effect pending the final determination or the withdrawal of the appeal.

(6) Where—

(a) a prohibition notice is quashed on appeal; and

(b) the person on whom it was served has suffered loss or incurred expenditure in complying with that notice,

the enforcing authority must pay to that person an amount equal to the loss suffered or the expenditure incurred.

(7) Any dispute under paragraph (6) as to the loss suffered or expenditure incurred must be determined by arbitration.

Enforcement by the High Court

46. If the enforcing authority is of the opinion that proceedings against a person for an offence under regulation 47(b) would afford an ineffectual remedy against that person, the enforcing authority may take proceedings in the High Court for the purpose of securing compliance with that notice.`

Miscellaneous offences

47. A person commits an offence if that person—

(a) fails to comply with the requirements of a notice served on that person under regulation 43;

(b) fails to comply with an enforcement notice or a prohibition notice;

(c) fails to comply with a direction given, or a requirement imposed, under regulation 42(2);

(d) intentionally obstructs an authorised person in the exercise or performance of the authorised person's powers or duties;

(e) furnishes to an authorised person any information which that person knows to be false or misleading;

(f) knowingly or recklessly furnishes information under regulation 11(4) which is false or misleading in any material particular; or

(g) contravenes, or causes another person to contravene, regulation 42(7).

Corporate offences

48.—(1) For the purposes of these Regulations, section 20(2) of the Interpretation Act (Northern Ireland) 1954(**2**) applies with the omission of the words "the liability of whose members is limited

(**1**) 1981 No 1675 (NI 26)
(**2**) 1954 c.33 (N.I.)

to" and where affairs of a body corporate are managed by its members, applies in relation to acts or defaults of a member in connection with the functions of management as if that person were a Director of the body corporate.

(2) If an offence committed by a partnership is shown—

(a) to have been committed with the consent or connivance of a partner; or

(b) to be attributable to any neglect on the part of the partner,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Proceedings for an offence alleged to have been committed by an unincorporated association must be brought in the name of the association and not in the name of any of its members.

(4) A fine imposed on an unincorporated association on its conviction for an offence must be paid out of the funds of the association.

(5) If an offence committed by an unincorporated association, other than a partnership, is shown—

(a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body; or

(b) to be attributable to any neglect on the part of such an officer or member,

that officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

Penalties

49. A person guilty of an offence under these Regulations is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine.

Fixed penalties

50.—(1) If an authorised person has reason to believe that a person has committed an offence under regulation 4 in relation to—

(a) refrigeration equipment;

(b) air conditioning; or

(c) heat pump equipment,

kept on premises used only as a private dwelling house, the authorised person may give that person a notice offering that person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

(2) Where a person is given a fixed penalty notice under this regulation in respect of an offence—

(a) no proceedings may be instituted for that offence before the expiry of 28 days following the date of the fixed penalty notice; and

(b) that person may not be convicted of that offence if that person pays the fixed penalty before the expiry of that period.

(3) A fixed penalty notice must contain such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(4) A fixed penalty notice must state—

(a) the period during which, by virtue of paragraph (2), proceedings cannot be taken for the offence;

(b) the amount of the fixed penalty; and

(c) the name of the person to whom and the address at which the fixed penalty must be paid.

(5) Payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the fixed penalty.

(6) Where a letter is sent in accordance with paragraph (5), payment is deemed to be made at the time at which that letter would be delivered in the ordinary course of post.

(7) A fixed penalty notice must be in the form set out in Schedule 3.

(8) The amount of fixed penalty payable in pursuance of a fixed penalty notice is £100 which must be paid to the enforcing authority.

(9) In any proceedings, a certificate which—

(a) purports to be signed by or on behalf of the chief finance officer of the enforcing authority; and

(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(10) In this regulation, "fixed penalty notice" means a notice given under paragraph (1).

Enforcement

51.—(1) Subject to paragraphs (2) and (3), the district council must enforce these Regulations.

(2) In relation to—

(a) cases of a particular description; or

(b) a particular case,

the Department may direct that the duty imposed by paragraph (1) on the district council must be discharged by it and not by the district council.

(3) The Secretary of State must enforce these Regulations in relation to offshore installations.

Application to the Crown

52.—(1) Subject to the provisions of this regulation, these Regulations bind the Crown.

(2) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under these Regulations but the High Court may on the application of the Department declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding paragraph (2), these Regulations must apply to persons in the public service of the Crown as they apply to other persons.