
STATUTORY RULES OF NORTHERN IRELAND

2015 No. 425

**The Fluorinated Greenhouse Gases
Regulations (Northern Ireland) 2015**

PART 3

Enforcement

Enforcement

- 18.**—(1) Subject to paragraphs (2) to [F1(8)], 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 the Department and not by the district council.
- (3) The Department must enforce these Regulations in relation to any Part A installation.
- (4) The Secretary of State must enforce these Regulations in relation to Northern Ireland offshore installations used in connection with any of the activities described in regulation 4(1)(a) to (f).
- (5) The Department must enforce these Regulations in relation to Northern Ireland offshore installations used in connection with any of the activities described in regulation 4(1)(g).
- (6) In this regulation, “Part A installation” has the same meaning as in regulation 2(1) of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 ^{M1}.
- [F2(7) The district council must comply with a direction given to it under paragraph (2).
- (8) A direction given under paragraph (2) may be revoked or modified by a further direction given under that paragraph.]

F1 Word in reg. 18(1) substituted (17.1 2019) by [The Fluorinated Greenhouse Gases \(Amendment\) Regulations \(Northern Ireland\) 2018 \(S.R. 2018/206\)](#), **regs. 1(1), 16(2)**

F2 Reg. 18(7)-(8) inserted (17.1.2019) by [The Fluorinated Greenhouse Gases \(Amendment\) Regulations \(Northern Ireland\) 2018 \(S.R. 2018/206\)](#), **regs. 1(1), 16(3)**

Marginal Citations

M1 S.R. 2013 No. 160

Appointment of authorised persons

- 19.**—(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.

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(2) An authorisation under Article 19 of the Environment (Northern Ireland) Order 2002 ^{M2} (powers of enforcing authorities and persons authorised by them) is an authorisation for the purposes of these Regulations.

(3) In relation to Northern Ireland offshore installations used in connection with any of the activities described in regulation 4(1)(a) to (f), 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—

- (a) regulation 16 (appointment of inspectors) of the Offshore Chemicals Regulations 2002 ^{M3};
- (b) regulation 12 (inspectors) of the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 ^{M4}.

Marginal Citations

M2 [S.I. 2002/3153 \(N.I. 7\)](#).

M3 [S.I. 2002/1355](#), amended by [S.I. 2005/2055](#) and 2011/982. There are other amendments not relevant to this instrument.

M4 [S.I. 2005/2055](#), amended by [S.I. 2011/982](#). There are other amendments not relevant to this instrument.

Powers of authorised persons

20.—(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—
- (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; and
 - (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 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 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 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.

(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 legal professional privilege on an order for disclosure and inspection in an action in the High Court

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(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 Northern Ireland against that person in any proceedings.

(10) In this regulation, “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 in Northern Ireland under the Banking and Financial Dealings Act 1971 ^{M5}.

Marginal Citations

M5 1971 c. 80. See section 1 and Schedule 1.

Warrants

21.—(1) 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—

- (a) that there are reasonable grounds to enter those premises for the purpose of enforcing these Regulations; and
 - (b) that 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

22. An [^{F3}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.

F3 Words in reg. 22 substituted (17.1.2019) by [The Fluorinated Greenhouse Gases \(Amendment\) Regulations \(Northern Ireland\) 2018 \(S.R. 2018/206\)](#), **regs. 1(1), 17**

Enforcement notices

- 23.**—(1) An [^{F4}enforcing authority] may serve an enforcement notice on any person who—
- (a) in the opinion of the [^{F4}enforcing authority], 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 2 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;
 - [^{F5}(c) fails, where labelling for products and equipment is required under Article 12 of the 2014 Regulation, to comply with Article 2 of Commission Regulation 2015/2068 (labelling format);]
 - (d) fails to comply with a requirement under regulation 16 (obligation of employers to employ qualified employees);
 - (e) fails to comply with a requirement under regulation 17 (obligations on certification bodies, attestation bodies and evaluation bodies to provide information); or
 - (f) fails to comply with an information notice served under regulation 22 (information notices).
- (2) An [^{F4}enforcing authority] 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); or
 - (d) Article 6 (follow-up check).
- (3) An [^{F4}enforcing authority] 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); or
 - (ii) Article 2(3) (determination of gas charge by certified personnel);
 - (b) fails to ensure that Article 2(2) (indication of gas charge) of Commission Regulation 1497/2007 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); and
 - (iii) Article 7 (requirements for newly commissioned systems).
- (4) Subject to paragraph (6), an [^{F4}enforcing authority] 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); or
 - (g) Article 9 (follow-up check).
- (5) Subject to paragraph (6), an [^{F4}enforcing authority] may serve an enforcement notice on an operator of stationary equipment who—

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- (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 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 24; and
 - (e) state that it is an offence under regulation 26(1)(d) to fail to comply with the enforcement notice.
- (8) An [F⁴enforcing authority] 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—
 - (a) the enforcing authority [F⁶which served the notice] may arrange for it to be complied with at the expense of the person on whom it was served; and
 - (b) the enforcing authority [F⁶which served the notice] may recover those expenses summarily or in any court of competent jurisdiction as a civil debt due to it.
- (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 [F⁷Article 4 of Commission Regulation 2015/2067] which relates to leakage checking of stationary equipment;

- (ii) is exempt from holding such a certificate by virtue of [^{F8}Article 3(3)(b) or (4) of Commission Regulation 2015/2067] ; or
- [^{F9}(iii) is exempt from holding such a certificate by virtue of Article 3(3)(a) of Commission Regulation 2015/2067 where the person is suitably qualified for the purposes of the essential safety requirements in paragraph 21(3) (permanent joining) of Part 3 of Schedule 2 to the Pressure Equipment (Safety) Regulations 2016;]
- (d) “stationary equipment” means stationary refrigeration, air conditioning or heat pump equipment which contains 3 kilograms or more of fluorinated greenhouse gases.

- F4** Words in reg. 23 substituted (17.1.2019) by [The Fluorinated Greenhouse Gases \(Amendment\) Regulations \(Northern Ireland\) 2018 \(S.R. 2018/206\)](#), **regs. 1(1), 18(2)**
- F5** Reg. 23(1)(c) substituted (17.1.2019) by [The Fluorinated Greenhouse Gases \(Amendment\) Regulations \(Northern Ireland\) 2018 \(S.R. 2018/206\)](#), **regs. 1(1), 18(3)**
- F6** Words in reg. 23(10) inserted (17.1.2019) by [The Fluorinated Greenhouse Gases \(Amendment\) Regulations \(Northern Ireland\) 2018 \(S.R. 2018/206\)](#), **regs. 1(1), 18(4)**
- F7** Words in reg. 23(11)(c)(i) substituted (17.1.2019) by [The Fluorinated Greenhouse Gases \(Amendment\) Regulations \(Northern Ireland\) 2018 \(S.R. 2018/206\)](#), **regs. 1(1), 18(5)(a)**
- F8** Words in reg. 23(11)(c)(ii) substituted (17.1.2019) by [The Fluorinated Greenhouse Gases \(Amendment\) Regulations \(Northern Ireland\) 2018 \(S.R. 2018/206\)](#), **regs. 1(1), 18(5)(b)**
- F9** Reg. 23(11)(c)(iii) substituted (17.1.2019) by [The Fluorinated Greenhouse Gases \(Amendment\) Regulations \(Northern Ireland\) 2018 \(S.R. 2018/206\)](#), **regs. 1(1), 18(5)(c)**

Appeals against enforcement notices

24.—(1) A person served with an enforcement notice, who is aggrieved by that notice, may appeal against it.

(2) The right of appeal is to a magistrates' court.

(3) The procedure on appeal to a magistrates' court is by way of notice, and Part 7 of the Magistrates' Courts (Northern Ireland) Order 1981 ^{M6} applies to the proceedings.

(4) An appeal must be brought by no later than 28 days after the date on which the enforcement notice is served.

(5) An enforcement notice is not suspended pending an appeal unless the court orders otherwise.

[^{F10}(6) The grounds for an appeal brought under this regulation are that a decision to serve the enforcement notice was—

- (a) based on an error of fact;
- (b) wrong in law;
- (c) wrong for any other reason; or
- (d) unreasonable.]

- F10** Reg. 24(6) inserted (17.1.2019) by [The Fluorinated Greenhouse Gases \(Amendment\) Regulations \(Northern Ireland\) 2018 \(S.R. 2018/206\)](#), **regs. 1(1), 19**

Marginal Citations

- M6** S.I. 1981/1675 (N.I. 26).

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Proceedings before a civil court

25. If the enforcing authority is of the opinion that proceedings against a person for an offence under regulation 26(1)(d) (the failure to comply with an enforcement notice) would afford an ineffectual remedy against that person, the enforcing authority may take civil proceedings in the High Court against that person for the purposes of seeking such remedy as the enforcing authority believes is appropriate in the circumstances.

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Changes and effects yet to be applied to the whole Rule associated Parts and Chapters:

Whole provisions yet to be inserted into this Rule (including any effects on those provisions):

- [reg. 3\(4\)](#) inserted by [S.I. 2019/281 reg. 4\(2\)](#)