
DRAFT STATUTORY INSTRUMENTS

2009 No.

The Groundwater (England and Wales) Regulations 2009

PART 4

Enforcement and penalties

Power to require the provision of information

17.—(1) For the purposes of discharging its functions under these Regulations, the Agency may, by notice served on any person, require that person to provide, in such form and within such period as is specified in the notice, the information specified in the notice.

(2) A notice may require a person to provide any information 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) Failure to comply with a notice without reasonable excuse is an offence.

Prohibition notice

18.—(1) Where—

- (a) any person is carrying on, or proposing to carry on, any activity on or in the ground; and
- (b) that activity might lead to the input into groundwater of any hazardous substance or non-hazardous pollutant,

the Agency may serve notice in writing on that person prohibiting the carrying on of that activity.

(2) Failure to comply with a notice is an offence.

Appeals against notices

19.—(1) Any person who is aggrieved by a notice under regulation 18 may within 21 days of service of the notice appeal to the Secretary of State or the Welsh Ministers as appropriate.

(2) The Secretary of State or the Welsh Ministers may cancel the notice or confirm it.

(3) The notice must be complied with pending appeal unless otherwise directed by the Secretary of State or the Welsh Ministers.

Codes of practice

20.—(1) The Secretary of State or the Welsh Ministers may approve for the purposes of these Regulations codes of practice issued for the purpose of giving practical guidance to persons engaged in any activity that may result in discharging hazardous substances or non-hazardous pollutants on the steps they should take to prevent them from entering groundwater.

(2) The Agency must take into account whether or not such a code of practice is being or is likely to be complied with before taking any enforcement action under these Regulations.

(3) A code of practice must be publicised as the Secretary of State or the Welsh Ministers see fit.

Particulars to be included in registers

21.—(1) The Agency must, as soon as reasonably practicable, enter on registers maintained by it under section 190 of the Water Resources Act 1991(1) full particulars of—

- (a) any permit under regulation 13;
- (b) any application for such a permit;
- (c) any variation or revocation of such a permit;
- (d) any notice under regulation 18;
- (e) any variation or revocation of any such notice;
- (f) any information furnished to the Agency for the purposes of regulation 13 or 17;
- (g) any monitoring information provided in connection with any permit under regulation 13;
- (h) any conviction for an offence under these Regulations;
- (i) any code of practice approved under these Regulations.

(2) This is subject to section 191A of the Water Resources Act 1991(2) (exclusion from registers of information affecting national security) and section 191B of that Act (exclusion from registers of certain confidential information) but as if sub-section (2) of that section referred to an application for a permit under regulation 13.

Penalties

22.—(1) A person guilty of an offence under regulation 13 or 18 is liable—

- (a) on summary conviction, to a fine not exceeding £50,000 or imprisonment for a term not exceeding 12 months, or to both, or
- (b) on conviction on indictment, to a fine or imprisonment not exceeding 5 years, or to both.

(2) A person guilty of an offence under regulation 17 is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or both, or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

Offences by bodies corporate

23.—(1) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar person of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

that person is guilty of the offence as well as the body corporate.

(2) For the purposes of this regulation, “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(1) Section 190 was amended by Schedule 22 to the Environment Act 1995 (c. 25).

(2) Sections 191A and 191B were inserted by paragraph 170 of Schedule 22 to the Environment Act 1995.

Offences by partnerships and unincorporated associations

24.—(1) Proceedings for an offence under these Regulations alleged to have been committed by a partnership or an unincorporated association may be brought in the name of the partnership or association.

(2) For the purposes of such proceedings—

- (a) rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate;
- (b) section 33 of the Criminal Justice Act 1925⁽³⁾ and Schedule 3 to the Magistrates’ Courts Act 1980⁽⁴⁾ apply in relation to the partnership or association as they apply in relation to a body corporate.

(3) A fine imposed on a partnership or association on its conviction of an offence under these Regulations is to be paid out of the funds of the partnership or association.

(4) Where an offence under these Regulations committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner (as well as the partnership) is guilty of the offence and is liable to be proceeded against and punished accordingly.

For these purposes, “partner” includes a person purporting to act as a partner.

(5) Where an offence under these Regulations committed by an unincorporated association is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the association, that officer (as well as the association) is guilty of the offence and is liable to be proceeded against and punished accordingly.

For these purposes, “officer” means an officer of the association or a member of its governing body, or a person purporting to act in such capacity.

Revocation

25. The Groundwater Regulations 1998⁽⁵⁾ are revoked in England and Wales.

(3) 1925 c. 86. Subsections (1) and (2) of section 33 were repealed by the Magistrates’ Courts Act 1952 (c. 55), section 132 and Schedule 6; subsection (3) was amended by the Courts Act 1971 (c. 23), section 56(1) and Schedule 8, part II, paragraph 19; subsection (4) was amended by the Courts Act 2003 (c. 39), section 109(1) and (3), Schedule 8, paragraph 71 and Schedule 10, and by the Magistrates’ Courts Act 1980 (c. 43), section 154 and Schedule 7, paragraph 5; subsection (5) was repealed by the Magistrates’ Court Act 1952, section 132, Schedule 6.

(4) 1980 c. 43. Sub-paragraph 2(a) was amended by the Criminal Procedure and Investigations Act 1996 (c. 25), section 47, Schedule 1, paragraph 13, and was repealed by the Criminal Justice Act 2003 (c. 44), sections 41 and 332, Schedule 3, part 2, paragraph 51, sub-paragraphs (1), (13)(a), and Schedule 37, part 4 (with effect from a date to be appointed); paragraph 5 was repealed by the Criminal Justice Act 1991 (c. 53), sections 25(2) and 101(2) and Schedule 13; paragraph 6 was amended by the Criminal Justice Act 2003, section 41, Schedule 3, part 2, paragraph 51, sub-paragraphs (1) and (13)(b) (with effect from a date to be appointed).

(5) S. I. 1998/2746.