
STATUTORY INSTRUMENTS

1999 No. 1053

The Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999

PART III

Enforcement Authorities

16.—(1) It shall be the duty of the following authorities to enforce these Regulations within their area—

- (a) in Great Britain, the Secretary of State or weights and measures authorities, and
- (b) in Northern Ireland, the Department of Economic Development.

(2) An enforcement authority shall, whenever the Secretary of State so directs, make a report to the Secretary of State on the exercise of the functions exercisable by that authority under these Regulations.

(3) For the purposes of providing for the enforcement of these Regulations—

- (a) sections 14, 15, 28 to 35, 37, 38, 44 and 47 of the 1987 Act shall apply and in respect of proceedings for contravention thereof as if—
 - (i) references to safety provisions were references to these Regulations;
 - (ii) references to goods were references to engines as the context may require;
 - (iii) in section 14, in subsection (6), for “six months” there were substituted “three months”;
 - (iv) in sections 28, 29, 30, 33, 34 and 35, the words “or any provision made by or under Part III of this Act” on each occasion that they occur were omitted;
 - (v) in section 28, subsections (3), (4) and (5) were omitted;
 - (vi) in section 29, subsection (4) was omitted;
 - (vii) in section 30, subsections (7) and (8) were omitted; and
 - (viii) in section 38(1), paragraphs (a) and (b) were omitted;
- (b) sections 39 and 40 of the 1987 Act shall apply to offences under section 32 of that Act as it is applied to these Regulations by sub-paragraph (a) above; and
- (c) in England and Wales, a magistrates' court may try an information in respect of an offence committed under these Regulations if the information is laid within twelve months from the time when the offence is committed, and in Scotland summary proceedings for such an offence may be begun at any time within twelve months from the time when the offence is committed.

(4) Nothing in this regulation shall authorise any enforcement authority to bring proceedings in Scotland for an offence.

Offences

17. Any person who—

- (a) places a new engine on the market in contravention of regulation 4, or
- (b) fails to send a list in contravention of regulation 11(4), or
- (c) fails to maintain records in contravention of regulation 11(5), or
- (d) fails to send a declaration in contravention of regulation 11(6), or
- (e) fails to comply with the requirements of regulation 11(8), or
- (f) in supplying information or producing documents for the purposes of these Regulations—
 - (i) makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular, or
 - (ii) produces, provides, sends or otherwise makes use of a document which he knows to be false in a material particular or recklessly produces, provides, sends or otherwise makes use of a document which is false in a material particular,

shall be guilty of an offence.

Penalty

18.—(1) A person guilty of an offence under regulation 17(a) shall be liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.

(2) A person guilty of an offence under regulation 17(b) to (f) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Defence of due diligence

19.—(1) Subject to the following provisions of this regulation, in proceedings against any person for an offence under regulation 17, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against a person for such an offence the defence provided by paragraph (1) involves an allegation that the commission of the offence was due—

- (a) to the act or default of another, or
- (b) to reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, not later than 7 clear days before the hearing of the proceedings (or, in Scotland, the trial date), he has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) It is hereby declared that a person shall not be entitled to rely on the defence provided by paragraph (1) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

- (a) to the steps which he took and those which might reasonably have been taken, for the purpose of verifying the information, and
- (b) to whether he had any reason to disbelieve the information.

Liability of persons other than the principal offender

20.—(1) Where the commission by any person of an offence under regulation 17 is due to an act or default committed by some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of any body corporate are managed by its members, paragraph (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) In this regulation, references to a “body corporate” include references to a partnership in Scotland and, in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.