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STATUTORY INSTRUMENTS

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**2011 No. 1543**

The Environmental Protection (Controls on  
Ozone-Depleting Substances) Regulations 2011

PART 2

Offences, penalties and enforcement

**Offences**

4.—(1) Any person who breaches a provision of the EU Regulation set out in Schedule 2 is guilty of an offence.

(2) Failure to comply with any of the following is an offence—

- (a) an enforcement notice;
- (b) a notice under regulation 11.

(3) It is an offence—

- (a) intentionally to obstruct any person acting in the execution or enforcement of the EU Regulation;
- (b) without reasonable cause, to fail to give to any such person any assistance or information which that person may reasonably require for those purposes;
- (c) to furnish to any such person any information knowing it to be false or misleading; or
- (d) to fail to produce a document or record to any such person when required to do so.

**Penalties**

5. 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.

**Offences by bodies corporate**

6.—(1) If an offence under these Regulations committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on the part of an officer,

the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In paragraph (1) “officer”, in relation to a body corporate, means—

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

(3) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as it applies to an officer of a body corporate.

(4) If an offence under these Regulations committed by a partnership in Scotland is proved—

- (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 a partner,

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

(5) In paragraph (4) “partner” includes a person purporting to act as a partner.

### **Enforcement**

7.—(1) The Agency and the local authority enforce the EU Regulation.

(2) In relation to—

- (a) cases of a particular description; or
- (b) a particular case,

the Secretary of State, as regards England, the Welsh Ministers as regards Wales, the Scottish Ministers as regards Scotland, or the Department of the Environment as regards Northern Ireland, may direct that the EU Regulation be enforced by them instead.

(3) The Secretary of State enforces the EU Regulation in relation to offshore installations.

(4) Nothing in these Regulations authorises an enforcing authority to bring proceedings in Scotland for an offence.

(5) In this regulation—

“the Agency” means—

- (a) as regards England and Wales, the Environment Agency, and
- (b) as regards Scotland, the Scottish Environment Protection Agency;

“local authority” means—

- (a) in England, where there is, within the meaning of the Local Government Changes for England Regulations 1994(1), a unitary authority, that authority;
- (b) otherwise in England—
  - (i) a district council,
  - (ii) a London borough council,
  - (iii) the Common Council of the City of London, or
  - (iv) the Council of the Isles of Scilly;
- (c) in relation to Wales—
  - (i) a county council, or
  - (ii) a county borough council;
- (d) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(2);
- (e) in relation to Northern Ireland, a district council.

(1) S. I. 1994/867.

(2) 1994 c. 39.

### **Authorisation by the enforcing authority**

**8.**—(1) An enforcing authority may authorise persons in writing for the purposes of enforcing the EU Regulation.

(2) The following are authorised for the purposes of paragraph (1)—

- (a) in England, Scotland and Wales a person authorised under section 108 of the Environment Act 1995<sup>(3)</sup>;
- (b) in Northern Ireland a person authorised under Article 72 of the Waste and Contaminated Land (Northern Ireland) Order 1997<sup>(4)</sup>.

(3) The powers in section 108 of the Environment Act 1995 (powers of enforcing authorities and persons authorised by them) are extended to the offshore area for the purposes of enforcing the EU Regulation.

### **Enforcement notices**

**9.**—(1) An enforcement notice is a notice requiring a person to take specified steps to remedy or avert a contravention.

(2) An authorised person who is of the opinion that a person has contravened, is contravening or is likely to contravene a provision of the EU Regulation may serve an enforcement notice on that person.

(3) An enforcement notice must—

- (a) state that the authorised person 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 or avert the contravention;
- (d) specify the period within which those steps must be taken;
- (e) state—
  - (i) that the person on whom the notice is served has the right of appeal to a magistrates' court or the sheriff; and
  - (ii) the period within which the appeal may be brought.

(4) An authorised person may at any time withdraw an enforcement notice.

(5) A person on whom an enforcement notice is served must comply with it at their own expense.

(6) 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.

### **Appeals against enforcement notices**

**10.**—(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.

(3) The procedure on an appeal to a magistrates' court is by way of complaint, and the Magistrates' Courts Act 1980<sup>(5)</sup> applies to the proceedings.

(4) An appeal to the sheriff is by summary application.

(5) An appeal may be brought not later than 28 days after the date on which the enforcement notice is served.

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(3) 1995 c.25.

(4) S.I. 1997/2778 (N.I. 19)

(5) 1980 c. 43.

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

(7) On an appeal the court or sheriff may either cancel the notice or confirm it, with or without modification.

### **Powers of the Secretary of State**

**11.** The Secretary of State may by notice require a person in possession of a controlled substance, or a product or equipment containing or relying on a controlled substance, that has been produced, placed on the market or imported or is intended to be or is being exported, in contravention of the EU Regulation, to dispose of it or otherwise render it harmless in accordance with the notice.

### **Power to seize and detain**

**12.—**(1) A customs official may seize and detain any controlled substance or product or equipment containing or relying on a controlled substance which the official believes is being—

- (a) imported in contravention of Article 15 of the EU Regulation; or
- (b) exported in contravention of Article 17 of the EU Regulation.

(2) Anything seized and detained under paragraph (1) may be detained for no longer than 5 working days and must be dealt with during the period of its detention in such manner as the Secretary of State may direct under section 5 of the 2009 Act.

(3) In this regulation—

“the 2009 Act” means the Borders, Citizenship and Immigration Act 2009<sup>(6)</sup>;

“customs official” means a general customs official designated under section 3(1) of the 2009 Act, or a customs revenue official designated under section 11(1) of that Act;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971<sup>(7)</sup> in any part of the United Kingdom.

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<sup>(6)</sup> 2009 c. 11.

<sup>(7)</sup> 1971 c. 80.