

STATUTORY INSTRUMENTS

**2018 No. 98**

**The Fluorinated Greenhouse Gases  
(Amendment) Regulations 2018**

**Insertion of new Schedule 4 (civil penalties) and Schedule 5 (appeals)**

31. After Schedule 3 insert—

“SCHEDULE 4

Regulation 31A(8)

Civil penalties

**Imposition of a civil penalty**

1.—(1) A relevant enforcing authority may by notice impose on any person, in relation to a failure to comply with any provision referred to in regulation 31A, a requirement to pay a civil penalty to the relevant enforcing authority of such an amount as the notice may specify or determine, subject to sub-paragraph (4).

(2) The standard of proof to be applied by a relevant enforcing authority imposing a civil penalty under these Regulations is on a balance of probabilities.

(3) A civil penalty may not be imposed—

- (a) on more than one occasion in relation to the same act or omission;
- (b) in relation to an act or omission that resulted in a criminal conviction.

(4) The maximum civil penalty is £200,000, except as provided in the following table—

<i>Column 1</i>	<i>Column 2</i>
<i>Maximum civil penalty</i>	<i>Provision subject to civil penalty</i>
£100,000 in relation to the entries in column 2	Article 3(2), (3) (except in relation to the failure of operators of equipment to ensure that equipment is repaired without undue delay where a leakage of fluorinated greenhouse gases is detected) and (4) of the 2014 Regulation Article 4(1) of the 2014 Regulation Article 5(1), (2), (3) and (4) of the 2014 Regulation Article 7(1) of the 2014 Regulation Article 8(1), (2) and (3) of the 2014 Regulation Article 13(1), (2) and (3) of the 2014 Regulation Article 17(1) of the 2014 Regulation Article 19(5) and (6) of the 2014 Regulation

---

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

---

<i>Column 1</i>	<i>Column 2</i>
<i>Maximum civil penalty</i>	<i>Provision subject to civil penalty</i>
	Article 3 of Commission Regulation 1497/2007
	Article 4(1), (2) and (4) of Commission Regulation 1497/2007
	Article 5 of Commission Regulation 1497/2007
	Article 6 of Commission Regulation 1497/2007
	Article 7 of Commission Regulation 1497/2007
	Article 2(1), (2), (3) and (4) of Commission Regulation 1516/2007
	Article 3 of Commission Regulation 1516/2007
	Article 4 of Commission Regulation 1516/2007
	Article 5 of Commission Regulation 1516/2007
	Article 6 of Commission Regulation 1516/2007
	Article 7(1) and (2) of Commission Regulation 1516/2007
	Article 8 of Commission Regulation 1516/2007
	Article 9 of Commission Regulation 1516/2007
	Article 10 of Commission Regulation 1516/2007
	Article 4(1) of Commission Regulation 304/2008
	Article 7(1) of Commission Regulation 304/2008
	Article 2(1) of Commission Regulation 307/2008
	Article 2(1) of Commission Regulation 2015/2066
	Article 3(1) of Commission Regulation 2015/2067
	Article 5 of Commission Regulation 2015/2067
£50,000 in relation to the entries in column 2	Regulation 19
	Article 6(1), (2) and (3) of the 2014 Regulation
	Article 12(1) of the 2014 Regulation
	Article 12(5) of the 2014 Regulation
	Article 14(2) of the 2014 Regulation
	Article 2 of Commission Regulation 2015/2068
£10,000 in relation to the entries in column 2	Regulation 31A(2)(c)
	Article 19(1), (2), (3) and (4) of the 2014 Regulation
	Article 1(2) of Commission Regulation 2016/879
	Article 4 of Commission Regulation 2016/879

(5) The Secretary of State or the Environment Agency may recover any civil penalty imposed by them under this Schedule as if payable under order of the court.

(6) The Scottish Ministers or SEPA may recover any civil penalty imposed by them under this Schedule as if it were payable under an extract registered decree arbitral bearing a warrant for execution by a sheriff of any sheriffdom.

(7) A relevant enforcing authority must, as soon as is reasonably practicable, pay the amount of any civil penalty that has been paid to it—

- (a) to the Secretary of State, in the case of the Environment Agency;
- (b) to the Scottish Ministers, in the case of SEPA.

#### **Notice of intent**

2.—(1) If a relevant enforcing authority proposes to impose a civil penalty on a person under this Schedule, the relevant enforcing authority must serve on that person a notice of what is proposed (“a notice of intent”).

(2) The notice of intent must include—

- (a) the grounds for the proposed penalty,
- (b) the maximum amount of the penalty, and
- (c) information as to the right to make written representations and objections within 28 days beginning with the day on which the notice of intent was received.

#### **Making representations and objections**

3. A person on whom a notice of intent is served by a relevant enforcing authority may, within 28 days beginning with the day on which the notice was received, make written representations and objections to the relevant enforcing authority in relation to the proposed imposition of a civil penalty.

#### **Civil penalty notice**

4.—(1) After the end of the period for making representations and objections under paragraph 3, the relevant enforcing authority which served the notice of intent must decide whether to impose the civil penalty set out in the notice of intent, with or without modifications.

(2) Where the relevant enforcing authority decides to impose a civil penalty, the notice imposing it must include information as to—

- (a) the grounds for imposing the penalty,
- (b) the amount to be paid,
- (c) how payment may be made,
- (d) the period within which payment must be made, which must be not less than 28 days,
- (e) rights of appeal, and
- (f) the consequences of failing to comply with the notice.

#### **Withdrawing or amending a notice**

5. The relevant enforcing authority may in writing, at any time before payment is made to it in accordance with a civil penalty notice, withdraw the notice or amend the amount specified in the notice.

### **Enforcement cost recovery notice**

6.—(1) A relevant enforcing authority may by notice require a person on whom it has served a civil penalty notice to pay the costs incurred by the relevant enforcing authority in relation to the service of that civil penalty notice up to the time of its service.

(2) Examples of costs include—

- (a) costs of detaining goods;
- (b) investigation costs;
- (c) administration costs;
- (d) costs of obtaining expert advice (including legal advice).

(3) The enforcement cost recovery notice must specify—

- (a) the grounds for serving the notice,
- (b) the amount to be paid,
- (c) how payment may be made,
- (d) the period within which payment must be made, which must not be less than 28 days, and
- (e) the right of appeal.

### **Publication of enforcement action**

7.—(1) Each relevant enforcing authority must from time to time publish the following information about cases in which civil penalties have been imposed—

- (a) the name of the person on whom the penalty was imposed;
- (b) the nature of the breach to which the penalty relates;
- (c) the amount of the penalty.

(2) Information must not be published until after the expiry of the period for making an appeal or, where an appeal has been made, until after the appeal has been determined.

(3) The requirement to publish information does not include cases where a civil penalty notice has been served but is subsequently withdrawn or quashed.

## SCHEDULE 5

Regulation 26(2A)

### Appeals

#### **Appeals against notices served by the Environment Agency or the Secretary of State**

1.—(1) A person on whom an enforcement notice, a civil penalty notice or an enforcement cost recovery notice is served by the Environment Agency or the Secretary of State may appeal against it to the First-tier Tribunal.

(2) An appeal must be made within 28 days beginning with the day on which the notice subject to the appeal is served.

(3) A person bringing an appeal under sub-paragraph (1) may withdraw the appeal at any time before the appeal is determined.

(4) Where an appeal is made under sub-paragraph (1), the notice is suspended until the appeal is withdrawn or determined by the First-tier Tribunal in accordance with sub-paragraph (5).

- (5) The First-tier Tribunal may—
  - (a) affirm the notice;
  - (b) direct the Environment Agency or Secretary of State to vary or withdraw the notice;
  - (c) impose such other enforcement notice, civil penalty notice or enforcement cost recovery notice as the First-tier Tribunal thinks fit.

#### **Appeals against notices served by the Scottish Ministers**

2.—(1) A person on whom an enforcement notice, a civil penalty notice or an enforcement cost recovery notice is served by the Scottish Ministers may appeal against it to the sheriff.

(2) The appeal must be made within 28 days beginning with the day on which the notice is served.

(3) A person bringing an appeal under sub-paragraph (1) may withdraw the appeal at any time before the appeal is determined.

(4) Where an appeal is made under sub-paragraph (1), the notice is suspended until the appeal is withdrawn or determined by the sheriff in accordance with sub-paragraph (5).

- (5) The sheriff may, without prejudice to any other powers the sheriff may exercise—
  - (a) affirm the notice;
  - (b) direct the Scottish Ministers to vary or withdraw the notice;
  - (c) impose such other enforcement notice, civil penalty notice or, as the case may be, enforcement cost recovery notice as the sheriff thinks fit.

#### **Appeals against notices served by SEPA**

3.—(1) A person, other than the Scottish Ministers, on whom an enforcement notice, a civil penalty notice or an enforcement cost recovery notice is served by SEPA may appeal against it to the Scottish Ministers.

(2) Subject to sub-paragraph (3), an appeal under sub-paragraph (1) must be made by notice in writing (“appeal notice”) within a period of 28 days beginning with the day on which the notice which is the subject of the appeal is served.

(3) The Scottish Ministers may at any time allow an appeal to be made after the expiry of the period mentioned in sub-paragraph (2).

- (4) The appeal notice must be accompanied by—
  - (a) a statement of the grounds of appeal,
  - (b) a copy of any correspondence or document relevant to the appeal, and
  - (c) a statement indicating whether the person making an appeal under sub-paragraph (1) (“the appellant”) wishes the appeal to be in the form of a hearing or to be determined on the basis of written representations.

(5) The appellant must also serve on SEPA a copy of the appeal notice together with copies of any documents referred to in sub-paragraph (4) which accompanied it.

(6) The appellant may, by further notice in writing to SEPA, withdraw the appeal made under sub-paragraph (1) at any time before the appeal is determined.

(7) Where an appeal under sub-paragraph (1) is made under this paragraph, the notice is suspended until the appeal is either withdrawn under sub-paragraph (6) or determined in accordance with sub-paragraph (11).

- (8) The Scottish Ministers may—

- (a) appoint any person to exercise on their behalf, with or without payment, the function of determining the appeal in accordance with sub-paragraph (11), or
  - (b) refer for determination any matter involved in the appeal to such person as the Scottish Ministers may appoint for the purpose, with or without payment.
- (9) If the appellant requests that an appeal under sub-paragraph (1) is in the form of a hearing, or the Scottish Ministers so decide—
- (a) the appeal must be in the form of a hearing;
  - (b) the appeal must continue in the form of a hearing, despite previously being considered on the basis of written representations.
- (10) Except in a case where an appeal is withdrawn under sub-paragraph (6), the Scottish Ministers or, with the agreement of the Scottish Ministers, any person appointed to determine an appeal (“the appointed person”), must notify the appellant and SEPA in writing of the decision and the reasons for the decision.
- (11) The Scottish Ministers may—
- (a) affirm the notice which is subject to the appeal under sub-paragraph (1);
  - (b) vary or withdraw the notice;
  - (c) impose such other enforcement notice, civil penalty notice or, as the case may be, enforcement cost recovery notice as the Scottish Ministers think fit, or as the case may be, the appointed person thinks fit.
- (12) Where the determination is that the notice subject to the appeal under sub-paragraph (1) is to be varied or withdrawn, SEPA must give effect to the determination.
- (13) Where an enforcement notice, a civil penalty notice or an enforcement cost recovery notice is served by SEPA on the Scottish Ministers (“the relevant notice”), the Scottish Ministers may appeal against it to the sheriff.
- (14) An appeal under sub-paragraph (13) must be made within 28 days beginning with the day on which the relevant notice is served.
- (15) The Scottish Ministers bringing an appeal under sub-paragraph (13) may withdraw the appeal at any time before the appeal is determined.
- (16) Where an appeal is made under sub-paragraph (13), the relevant notice is suspended until the appeal is withdrawn or determined by the sheriff in accordance with sub-paragraph (17).
- (17) The sheriff may, without prejudice to any other powers the sheriff may exercise—
- (a) affirm the relevant notice;
  - (b) direct SEPA to vary or withdraw the relevant notice;
  - (c) impose such other enforcement notice, civil penalty notice or, as the case may be, enforcement cost recovery notice as the sheriff thinks fit.

### **Grounds for appeal**

- 4.—(1) The grounds for an appeal against an enforcement notice under paragraph 1(1), 2(1), 3(1) or 3(13) of this Schedule are that the relevant enforcing authority’s decision to serve the enforcement notice was—
- (a) based on an error of fact;
  - (b) wrong in law;
  - (c) wrong for any other reason;
  - (d) unreasonable.

(2) The grounds for an appeal against a civil penalty notice under paragraph 1(1), 2(1), 3(1) or 3(13) of this Schedule are—

- (a) that the relevant enforcing authority's decision to serve the civil penalty notice was—
  - (i) based on an error of fact;
  - (ii) wrong in law;
  - (iii) wrong for any other reason;
  - (iv) unreasonable;
- (b) that the amount specified in, or determined by, the notice is unreasonable.

(3) The grounds for an appeal against an enforcement cost recovery notice under paragraph 1(1), 2(1), 3(1) or 3(13) of this Schedule are—

- (a) that the relevant enforcing authority's decision to serve the enforcement cost recovery notice was—
  - (i) based on an error of fact;
  - (ii) wrong in law;
  - (iii) wrong for any other reason;
  - (iv) unreasonable;
- (b) that the amount specified in the notice is unreasonable.”.