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STATUTORY RULES OF NORTHERN IRELAND

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**2012 No. 453**

**The Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2012**

**PART 1**

**GENERAL**

**Citation and commencement**

1. These Regulations may be cited as the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2012 and come into operation on 6<sup>th</sup> January 2013.

**Interpretation: general**

2.—(1) In these Regulations—

“the 2003 Landfill Regulations” means the Landfill Regulations (Northern Ireland) 2003(1);  
“baseline report” means, in relation to any particular site, all relevant information on the state of soil and groundwater contamination by relevant hazardous substances and shall include in particular all relevant—

- (a) information on the existing use of the site;
- (b) information on past uses of the site; and
- (c) soil and groundwater measurements based on—
  - (i) previously existing information; and
  - (ii) new information,

if using that information provides an accurate description of the state of the site at the time of the report;

“change in operation” means, in relation to an installation or mobile plant, a change in the nature or functioning or an extension of the installation or mobile plant which may have consequences for the environment;

“chief inspector” means the inspector constituted to be the chief inspector under regulation 8(3);

“coating” means any preparation, including all the organic solvents or preparations containing organic solvents necessary for its proper application, which is used to provide a film with decorative, protective or other functional effect on a surface;

“combustion plant” means any technical apparatus in which fuels are oxidised in order to use the heat thus generated;

“the Department” means the Department of the Environment;

“directly associated activity” means—

- (a) in relation to an activity carried out in a stationary technical unit and falling within any description in sections 1.1 to 6.11 of Part 1 of Schedule 1, any directly associated activity which has a technical connection with the activity carried out in the stationary technical unit and which could have an effect on pollution; and
- (b) in relation to a SED activity, any directly associated activity which has a technical connection with the SED activity carried out on the same site and which could have an effect on any discharge of volatile organic compounds into the environment;

“draft determination” means the proposed decision made by the enforcing authority in relation to an application for, a permit or a permit variation, for a Part A installation or Part A mobile plant. The proposed decision must be advertised and interested parties may make representations which are then considered by the enforcing authority before it makes its final determination, in line with public participation principles.

“emission” means—

- (a) in relation to Part A installations, the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in the installation into the air, water or land;
- (b) in relation to Part B installations, the direct release of substances or heat from individual or diffuse sources in the installation into the air;
- (c) in relation to Part C installations, the direct release of substances or heat from individual or diffuse sources in the installation into the air;
- (d) in relation to Part A mobile plant, the direct or indirect release of substances, vibrations, heat or noise from the mobile plant into the air, water or land;
- (e) in relation to Part B mobile plant, the direct release of substances or heat from the mobile plant into the air;
- (f) in relation to Part C mobile plant, the direct release of substances or heat from the mobile plant into the air;

“emission limit value” means the mass, expressed in terms of specific parameters, concentration or level of an emission, which may not be exceeded during one or more periods of time;

“enforcement notice” has the meaning given by regulation 27(1);

“enforcing authority” means, in relation to the exercise of functions under these Regulations, the authority, being either the chief inspector or district council, by whom, under regulation 7, those functions are exercisable;

“environmental inspection” means all actions, including site visits, monitoring of emissions and checks of internal reports and follow-up documents, verification of self-monitoring, checking of the techniques used and adequacy of the environmental management of the installation or mobile plant, undertaken by or on behalf of the competent authority to check and promote compliance of operations with their permit conditions and, where necessary, to monitor their environmental impact;

“environmental quality standard” means the set of requirements which must be fulfilled at a given time by a given environment or particular part thereof, as set out in EU law;

“fuel” means any solid, liquid or gaseous combustible material;

“gas turbine” means any rotating machine which converts thermal energy into mechanical work, consisting mainly of a compressor, a thermal device in which fuel is oxidised in order to heat the working fluid, and a turbine;

“groundwater” means groundwater as defined in point 2 of Article 2 of Directive [2000/60/EC](#)(2) of the European Parliament and of the Council establishing a framework for community action in the field of water policy;

“hazardous substances” means substances or mixtures as defined in Article 3 of Regulation [\(EC\) No 1272/2008](#)(3) of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures;

“hazardous waste” means hazardous waste as defined in point 2 of Article 3 of Directive [2008/98/EC](#)(4) of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives;

“IED” means Directive [2010/75/EU](#)(5) of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Recast);

“inspector” means a person appointed under regulation 8(1) or (5);

“installation” means a stationary technical unit within which one or more activities listed in Part 1 of Schedule 1 are carried out, and any other directly associated activities on the same site which have a technical connection with the activities listed in that Part and which could have an effect on emissions and pollution;

“landfill” means a landfill to which the 2003 Landfill Regulations apply;

“mixture” means a mixture or solution composed of two or more substances;

“mobile plant” means plant which is designed to move or to be moved whether on roads or otherwise and which is used to carry out one or more activities listed in sections 1.1 to 6.11 of Part 1 of Schedule 1;

“off-site condition” has the meaning given by regulation 13(7);

“organic compound” means any compound containing at least the element carbon and one or more of hydrogen, halogens, oxygen, sulphur, phosphorus, silicon or nitrogen, with the exception of carbon oxides, inorganic carbonates and bicarbonates;

“organic solvent” means any volatile organic compound which is used for any of the following—

- (a) alone or in combination with other agents, and without undergoing a chemical change, to dissolve raw materials, products or waste materials;
- (b) as a cleaning agent to dissolve contaminants;
- (c) as a dissolver;
- (d) as a dispersion medium;
- (e) as a viscosity adjuster;
- (f) as a surface tension adjuster;
- (g) as a plasticiser; or
- (h) as a preservative;

“operator”, subject to paragraph (2), means any natural or legal person who operates or controls in whole or in part the installation or mobile plant;

“Part A installation”, “Part B installation” and “Part C installation” shall be interpreted in accordance with Part 3 of Schedule 1;

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(2) O.J.L327,22.12.2000, p.1

(3) O.J.L353,31.12.2008, p.1

(4) O.J. L312, 22.11.2008, p.3

(5) O.J.L334, 17.12.2010, p.17

“Part A mobile plant”, “Part B mobile plant” and “Part C mobile plant” shall be interpreted in accordance with Part 3 of Schedule 1;

“permit” means a written authorisation granted under regulation 10 to operate all or part of an installation or mobile plant;

“Planning Appeals Commission” means the Planning Appeals Commission established under Article 110 of the Planning (Northern Ireland) Order 1991<sup>(6)</sup>;

“pollution” means the direct or indirect introduction, as a result of human activity, of substances, vibrations, heat or noise into air, water or land which may be harmful to human health or the quality of the environment, result in damage to material property or impair or interfere with amenities and other legitimate uses of the environment;

“poultry” means poultry as defined in point 1 of Article 2 of Council Directive 90/539/EEC<sup>(7)</sup> of 15 October 1990 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs;

“the public” means one or more natural or legal persons and, in accordance with national law or practice, their associations, organisations or groups;

“the public concerned” means the public affected or likely to be affected by, or having an interest in, the taking of a decision on the granting or the updating of a permit or of permit conditions; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;

“reduction scheme” means a reduction scheme which complies with Part 5 of Annex VII of the IED ;

“revocation notice” has the meaning given by regulation 24(1);

“SED activity” means any activity falling within section 7 of Part 1 of Schedule 1 and any other activity listed in Schedule 1 to which Chapter V of the IED applies;

“SED installation” means—

- (a) a stationary technical unit where one or more SED activities are carried out; and
- (b) any other location on the same site where any other directly associated activities are carried out;

“site report” means a report describing the condition of the site of the installation or mobile plant containing the information specified in Schedule 4.

“small SED installation” means a SED installation which falls within the lower threshold band of items 1, 3, 4, 5, 8, 10, 13, 16 or 17 of Part 2 of Annex VII of the IED or, for the other activities of Part 2 of Annex VII, which have a solvent consumption of less than 10 tonnes/year;

“soil” means the top layer of the Earth’s crust, composed of mineral particles, organic matter, water, air and living organisms, situated between the bedrock and the surface;

“specified waste management activity” means any one of the following activities—

- (a) the disposal of waste in a landfill, whether or not the disposal falls within section 5.2 of Part 1 of Schedule 1;
- (b) the disposal or recovery of hazardous waste falling within section 5.3 of that Part of that Schedule;
- (c) the disposal or recovery of non-hazardous waste falling within section 5.4 of that Part of that Schedule;

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(6) S.I.1991 No.1220 (N.I.11)

(7) O.J.L303, 31.10.1990, p.6

- (d) the temporary storage of waste falling within section 5.5 of that Part of that Schedule;
  - (e) the underground storage of waste falling within section 5.5 of that Part of that Schedule;
- “stack” means a structure containing one or more flues providing a passage for waste gases in order to discharge them into the air;

“substance” means any chemical element and its compounds, with the exception of the following substances—

- (a) radioactive substances as defined in Article 1 of Council Directive 96/29/Euratom<sup>(8)</sup> of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation;
- (b) genetically modified micro-organisms as defined in Article 2(b) of Directive 2009/41/EC<sup>(9)</sup> of the European Parliament and of the Council of 6 May 2009 on the contained use of genetically modified micro-organisms;
- (c) genetically modified organisms as defined in Article 2(2) of Directive 2001/18/EC<sup>(10)</sup> of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms;

“substantial change” means a change in the nature or functioning, or an extension, of an installation or mobile plant which, in the opinion of the enforcing authority, may have negative effects on human health or the environment and shall include—

- (a) in relation to a small SED installation which does not fall wholly within the scope of Annex I of the IED, a change of the nominal capacity leading to an increase of emissions of volatile organic compounds of more than 25 per cent;
- (b) in relation to all other SED installations which do not fall within the scope of Annex I of the IED, a change of the nominal capacity leading to an increase of emissions of volatile organic compounds of more than 10 per cent;
- (c) any change in operation of an installation or mobile plant which in itself meets any of the thresholds specified for a Part A activity under Part 1 of Schedule 1.

“suspension notice” has the meaning given by regulation 28(1);

“variation notice” has the meaning given by regulation 19(5);

“volatile organic compound” or “VOC” means any organic compound as well as the fraction of creosote, having at 293.15 K a vapour pressure of 0.01 kPa or more, or having a corresponding volatility under the particular conditions of use;

“waste” means waste as defined in Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste;

“waste incineration plant” means any stationary or mobile technical unit and equipment dedicated to the thermal treatment of waste, with or without recovery of the combustion heat generated, through the incineration by oxidation of waste as well as other thermal treatment processes, such as pyrolysis, gasification or plasma process, if the substances resulting from the treatment are subsequently incinerated;

“waste co-incineration plant” means any stationary or mobile technical unit whose main purpose is the generation of energy or production of material products and which uses waste as a regular or additional fuel or in which waste is thermally treated for the purpose of disposal through the incineration by oxidation of waste as well as other thermal treatment processes, such as pyrolysis, gasification or plasma process, if the substances resulting from the treatment are subsequently incinerated;

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<sup>(8)</sup> O.J.L159, 29.6.1996, p.1

<sup>(9)</sup> O.J.L125, 21.5.2009, p.75

<sup>(10)</sup> O.J.L106, 17.4.2001, p.1

“waste incineration installation” means an installation or mobile plant (or part thereof) to which Chapter IV of the IED applies.

(2) For the purposes of these Regulations—

- (a) where an installation or mobile plant has not been put into operation, the person who will have control over the operation of the installation or mobile plant when it is put into operation shall be treated as the operator of the installation or mobile plant;
- (b) where an installation or mobile plant has ceased to be in operation, the person who holds the permit which applies to the installation or mobile plant shall be treated as the operator of the installation or mobile plant.

(3) In these Regulations—

- (a) a reference to a release into water includes a release into a sewer (within the meaning of Article 2(2) of the Water and Sewerage Services (Northern Ireland) Order 2006<sup>(11)</sup>);
- (b) a reference to a Council Directive is a reference to that Directive together with any amendment made before the date on which these Regulations are made.

(4) Schedule 1 shall have effect and Part 1 of Schedule 1 shall be interpreted in accordance with the provisions as to interpretation in Parts 1 and 2 of that Schedule.

#### **Interpretation: “best available techniques” or “BAT”**

3.—(1) For the purpose of these Regulations, “best available techniques” or “BAT” means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing in principle the basis for emission limit values designed to prevent and, where that is not practicable, generally to reduce emissions and the impact on the environment as a whole, and for the purpose of this definition—

- (a) “available techniques” means those techniques which have been developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the cost and advantages, whether or not the techniques are used or produced inside the United Kingdom, as long as they are reasonably accessible to the operator;
- (b) “best” means, in relation to techniques, the most effective in achieving a high general level of protection of the environment as a whole;
- (c) “techniques” includes both the technology used and the way in which the installation or mobile plant is designed, built, maintained, operated and decommissioned.

(2) “BAT reference document” means a document, resulting from the exchange of information organised pursuant to Article 13 of the IED, drawn up for defined activities and describing, in particular, applied techniques, present emissions and consumption levels, techniques considered for the determination of BAT as well as BAT conclusions and any emerging techniques, giving special consideration to the criteria listed in Schedule 2.

(3) “BAT conclusions” means a document containing the parts of a BAT reference document laying down the conclusions on BAT, their description, information to assess their applicability, the emission levels associated with BAT, associated monitoring, associated consumption levels and, where appropriate, relevant site remediation measures.

(4) “emission levels associated with BAT” means the range of emission levels obtained under normal operating conditions using a best available technique or a combination of BAT, as described in BAT conclusions, expressed as an average over a given period of time, under specified reference conditions.

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(11) S.I.2006 No.3336 (N.I.21)

(5) “emerging technique” means a novel technique for an industrial activity that, if commercially developed, could provide either a higher general level of protection of the environment or at least the same level of protection of the environment and higher cost savings than existing BAT.

(6) Schedule 2 shall have effect in relation to the determination of BAT.

### **Fit and proper person**

4.—(1) This regulation applies for the purpose of the discharge of any function under these Regulations which requires the chief inspector to determine whether a person is or is not a fit and proper person to carry out a specified waste management activity.

(2) Whether a person is or is not a fit and proper person to carry out a specified waste management activity shall be determined by reference to the fulfilment of the conditions of the permit which apply or will apply to the carrying out of that activity.

(3) Subject to paragraph (4), a person shall be treated as not being a fit and proper person if it appears to the chief inspector that—

- (a) that person or another relevant person has been convicted of a relevant offence;
- (b) that person has not made, or will not before commencement of the specified waste management activity make, adequate financial provision (either by way of financial security or its equivalent) to ensure that—
  - (i) the obligations (including after-care provisions) arising from the permit in relation to that activity are discharged; and
  - (ii) any closure procedures required by the permit in relation to that activity are followed;
- (c) that person and all staff engaged in carrying out that activity will not be provided with adequate professional technical development and training; or
- (d) the management of that activity will not be in the hands of a technically competent person.

(4) The chief inspector may, if he considers it proper to do so in any particular case, treat a person as a fit and proper person notwithstanding that paragraph (3)(a) applies in that person’s case.

(5) For the purposes of this regulation—

- (a) “relevant offence” means an offence prescribed for the purpose of Article 3(3)(a) of the Waste and Contaminated Land (Northern Ireland) Order 1997(12); and
- (b) the qualifications and experience required of a person for the purposes of Article 3(3)(b) of the Waste and Contaminated Land (Northern Ireland) Order 1997 which are prescribed under Article 3(5) of that Order shall be treated as the qualifications and experience required of a person for the purposes of paragraph (3)(d).

(6) In paragraph 3(a), “another relevant person” means, in relation to the holder or proposed holder of a permit—

- (a) any person who has been convicted of a relevant offence committed—
  - (i) by him in the course of his employment by the holder or proposed holder of the permit; or
  - (ii) in the course of the carrying on of any business by a partnership one of the members of which was the holder or proposed holder of the permit;
- (b) a body corporate which has been convicted of a relevant offence committed when the holder or proposed holder of the permit was a director, manager, secretary or other similar officer of that body corporate; or

- (c) where the holder or proposed holder of the permit is a body corporate, a person who is a director, manager, secretary or other similar officer of that body corporate and who—
  - (i) has been convicted of a relevant offence; or
  - (ii) was a director, manager, secretary or other similar officer of another body corporate at a time when a relevant offence of which that other body corporate has been convicted, was committed.

### **Application to the Crown**

5.—(1) Subject to the provisions of this regulation, these Regulations and the 2003 Landfill Regulations bind the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

(2) No contravention by the Crown of any provision of these Regulations or the 2003 Landfill Regulations shall make the Crown criminally liable under regulation 36 of these Regulations or under regulation 17 of the 2003 Landfill Regulations and no proceedings may be taken against the Crown under regulation 37 of these Regulations but the High Court may, on the application of the enforcing authority charged with enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), the provisions of these Regulations and the 2003 Landfill Regulations shall apply to persons in the public service of the Crown as they apply to other persons.

(4) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any specified powers of entry exercisable under regulation 30, that it is requisite or expedient that, in the interests of national security, the powers of entry should not be exercisable in relation to the premises, those powers shall not be exercisable in relation to those premises; and in this paragraph “specified” means specified in the certificate and “Crown premises” means premises held or used by or on behalf of the Crown.

(5) Any reference to the Crown in this regulation includes the Crown in right of Her Majesty’s Government in the United Kingdom.

### **Applications**

6.—(1) An enforcing authority may require any application or type of application made to it under any provision of these Regulations to be made on a form made available by the enforcing authority.

(2) A form made available by an enforcing authority under paragraph (1) shall specify the information required by the enforcing authority to determine the application, which shall include any information required to be contained in the application by the provision of these Regulations under which the application is made.

(3) Any application made under these Regulations may, with the agreement of the enforcing authority, be sent to the enforcing authority electronically.

(4) Where an application which is required to be accompanied by a fee, map or plan is sent electronically, the fee, map or plan may be sent to the enforcing authority separately from the application but the application shall not be treated as having been received by the enforcing authority until the fee, map or plan has also been received.

(5) An application made under these Regulations may be withdrawn at any time before it is determined.



## **Discharge and scope of functions**

7.—(1) This regulation determines the authority by whom the functions conferred or imposed by these Regulations on an enforcing authority are exercisable and the purposes for which they are exercisable.

(2) Those functions, in their application to a Part A installation or Part A mobile plant, shall be functions of the chief inspector and shall be exercisable for the purpose of achieving a high level of protection of the environment taken as a whole by, in particular, preventing or, where that is not practicable, reducing emissions into the air, water and land.

(3) Those functions, in their application to a Part B installation or Part B mobile plant, shall be functions of the chief inspector and, subject to paragraph (5), shall be exercisable for the purpose of preventing or, where that is not practicable, reducing emissions into the air.

(4) Those functions, in their application to a Part C installation, shall be functions of the district council in whose district the installation is (or will be) situated and, subject to paragraph (5), shall be exercisable for the purpose of preventing or, where that is not practicable, reducing emissions into the air.

(5) The functions conferred or imposed by these Regulations in relation to a SED installation shall be exercisable for the purpose of preventing or reducing emissions of volatile organic compounds into air, soil and water as well as preventing the inclusion or reducing the amount of solvents contained in any product.

(6) Those functions, in their application to a Part C mobile plant, shall be functions of—

- (a) where the operator of the mobile plant has their principal place of business in Northern Ireland, the district council in whose district that place of business is;
- (b) where the operator of the mobile plant has their principal place of business outside of Northern Ireland and the mobile plant is not covered by a permit, the district council in whose district the plant is first operated or, where the plant has not been operated in Northern Ireland, the district council in whose district it is intended by the operator that the plant should first be operated;
- (c) where the operator has their principal place of business outside of Northern Ireland and the mobile plant is covered by a permit, the district council which granted the permit,

and shall be exercisable for the purpose of preventing or, where that is not practicable, reducing emissions into the air.

(7) The Department may, as respects functions under these Regulations exercisable by a district council specified in a direction, direct that those functions shall be exercised instead by the chief inspector while the direction remains in force or during such period as may be specified in the direction.

(8) A transfer of functions under paragraph (7) to the chief inspector relating to Part C installations or Part C mobile plant does not make them exercisable by the chief inspector for any other purpose than that mentioned in paragraphs (4), (5) and (6).

(9) The Department may, as respects functions under these Regulations exercisable by the chief inspector in respect of Part B installations specified in a direction, direct that those functions shall be exercised instead by a district council while the direction remains in force or during such period as may be specified in the direction.

(10) A direction under paragraph (7) may transfer functions exercisable by a district council in relation to all or certain types of installations or mobile plant (a “general direction”) or in relation to a specific installation or mobile plant specified in the direction (a “specific direction”) but a direction under paragraph (9) may only be a specific direction.

(11) A direction under paragraph (7) or (9) may include such saving and transitional provisions as the Department considers necessary or expedient.

(12) The Department, on giving or withdrawing a general direction under paragraph (7), shall—

- (a) serve notice of it on the chief inspector and on the district councils affected by the direction; and
- (b) cause notice of it to be published as soon as practicable in the Belfast Gazette and in at least two newspapers circulating in the district of each district council affected by the direction,

and any such notice shall specify the date on which the direction is to take (or took) effect and (where appropriate) its duration.

(13) The Department, on giving or withdrawing a specific direction under paragraph (7) or (9), shall—

- (a) serve notice on the chief inspector, the district council and the operator or the person appearing to the Department to be the operator of the installation or mobile plant affected; and
- (b) cause notice of it to be published in the Belfast Gazette and in at least two newspapers circulating in the district council's district,

and any such notice shall specify the date on which the direction is to take (or took) effect and (where appropriate) its duration.

(14) The requirements of paragraph (12)(b) or paragraph (13)(b) shall not apply in any case where, in the opinion of the Secretary of State, the publication of the notice in accordance with that sub-paragraph would be contrary to the interests of national security.

(15) It shall be the duty of the chief inspector to follow developments in BAT, and the publication of any new or updated BAT conclusions and he shall make that information available to the public concerned.

(16) The chief inspector shall have regard to any guidance established by the European Commission which assists in encouraging the development and application of emerging techniques.

(17) Schedules 8 to 13 shall have effect.

### **Appointment of chief inspector and other inspectors**

8.—(1) The Department may appoint as inspectors (under whatever title the Department may determine) such persons having such suitable qualifications as the Department thinks necessary for carrying these Regulations into effect, and may terminate any appointment made under this paragraph.

(2) The Department may make to, or in respect of, any person so appointed such payments by way of remuneration, allowances or otherwise as the Department may determine.

(3) The Department shall constitute one of the inspectors appointed under paragraph (1) to be the chief inspector.

(4) The functions conferred or imposed by or under these Regulations on the chief inspector as the enforcing authority may, to any extent, be delegated by him to any other inspector appointed under paragraph (1).

(5) A district council may appoint as inspectors (under whatever title the council may determine) such persons having suitable qualifications as the council thinks necessary for carrying these Regulations into effect in the council's district, and may terminate any appointment made under this paragraph.

(6) An inspector shall not be liable in any civil or criminal proceedings for anything done in the performance of their functions under Part 3 if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

