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DRAFT STATUTORY RULES OF NORTHERN IRELAND

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**2013 No.**

**The Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013**

**PART 3**

**ENFORCEMENT**

**Duty of the enforcing authority to undertake inspections and to ensure compliance with conditions**

**26.**—(1) While a permit is in force it shall be the duty of the enforcing authority to take such action under these Regulations as may be necessary for the purpose of ensuring that the conditions of the permit are complied with.

(2) In the case of a Part A installation or Part A mobile plant the chief inspector shall set up a system of environmental inspections of installations and mobile plant addressing the examination of the full range of relevant environmental effects from the installations and mobile plant concerned.

(3) The chief inspector shall ensure that all installations and mobile plant are covered by an environmental inspection plan and shall ensure that this plan is regularly reviewed and, where appropriate, updated.

(4) Each environmental inspection plan shall include the following—

- (a) a general assessment of relevant significant environmental issues;
- (b) the geographical area covered by the inspection plan;
- (c) a register of the installations and mobile plant covered by the plan;
- (d) procedures for drawing up programmes for routine environmental inspections pursuant to paragraph (5); and
- (e) procedures for non-routine environmental inspections pursuant to paragraph (7).

(5) Based on the inspection plans, the chief inspector shall regularly draw up programmes for routine environmental inspections, including the frequency of site visits for different types of installations and mobile plant so that—

- (a) the period between two site visits is based on a systematic appraisal of the environmental risks of the installations and mobile plant concerned and does not exceed one year for installations and mobile plant posing the highest risks and three years for installations and mobile plant posing the lowest risks;
- (b) if an inspection has identified an important case of non-compliance with the permit conditions, an additional site visit shall be carried out within six months of that inspection;

(6) The systematic appraisal of the environmental risks shall be based on at least the following criteria—

- (a) the potential and actual impacts of the installations and mobile plant concerned on human health and the environment taking into account the levels and types of emissions, the sensitivity of the local environment and the risk of accidents;

- (b) the record of compliance with permit conditions; and
  - (c) the participation of the operator in the European Union's eco-management and audit scheme (EMAS), pursuant to Regulation (EC) No 1221/2009<sup>(1)</sup> of the European Parliament and of the Council of 25 November 2009.
- (7) Non-routine environmental inspections shall be carried out to investigate serious environmental complaints, serious environmental accidents, incidents and occurrences of non-compliance as soon as possible and, where appropriate, before the granting, reconsideration or update of a permit.
- (8) Following each site visit, the chief inspector shall—
- (a) prepare a report describing its relevant findings regarding compliance of the installation or mobile plant with the permit conditions and its conclusions on whether any further action is necessary;
  - (b) notify the operator concerned within two months of the site visit taking place; and
  - (c) make the report publicly available within four months of the site visit taking place, in accordance with Directive 2003/4/EC<sup>(2)</sup> of the European Parliament and of the Council of 28 January 2003 on public access to environmental information.

### Enforcement notices

27.—(1) If the enforcing authority is of the opinion that an operator has contravened, is contravening or is likely to contravene any condition of his permit, the enforcing authority may serve on him a notice (an “enforcement notice”).

- (2) An enforcement notice shall—
- (a) state the opinion of the enforcing authority;
  - (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise;
  - (c) specify the steps that must be taken to remedy the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be;
  - (d) specify the period within which those steps must be taken; and
  - (e) be in writing.
- (3) The steps that may be specified in an enforcement notice as steps that must be taken to remedy the contravention of any condition of a permit may include both steps that must be taken to make the operation of the installation or mobile plant comply with the conditions of the permit and steps that must be taken to remedy the effects of any pollution caused by the contravention.
- (4) The enforcing authority may also serve on an operator an enforcement notice in the event of an accident or incident significantly affecting the environment.
- (5) An enforcement notice served under paragraph (4) shall—
- (a) specify the measures that the enforcing authority considers necessary to limit the environmental consequences and to prevent further possible incidents or accidents;
  - (b) specify the period within which those steps must be taken; and
  - (c) be in writing.
- (6) The enforcing authority may withdraw an enforcement notice at any time by further written notice served on the operator.

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(1) O.J. L342, 22.12.2009, p.1

(2) O.J. L41, 14.2.2003, p.26

## **Suspension notices**

**28.**—(1) If the enforcing authority is of the opinion, in respect of an installation or mobile plant authorised under these Regulations, that the operation of the installation or mobile plant, or the operation of it in a particular manner, involves an imminent risk of serious pollution, it shall, unless it intends to arrange for steps to be taken under regulation 29(1) in relation to the risk, serve a notice under this regulation (a “suspension notice”) on the operator of the installation or mobile plant.

(2) Paragraph (1) applies whether or not the particular manner of operating the installation or mobile plant in question is regulated by or contravenes a condition of the permit.

(3) If the chief inspector is of the opinion, in respect of the carrying out of specified waste management activities under a permit, that the operator carrying out the activities has ceased to be a fit and proper person in relation to those activities by reason of their management having ceased to be in the hands of a technically competent person, the chief inspector may serve a suspension notice on that operator.

(4) A suspension notice shall—

- (a) state the enforcing authority’s opinion, as mentioned in paragraph (1) or (3);
- (b) in the case of a notice served under paragraph (1), specify—
  - (i) the imminent risk involved in the operation of the installation or mobile plant;
  - (ii) the steps that must be taken to remove it and the period within which they must be taken;
- (c) state that any relevant permit shall, until the notice is withdrawn, cease to have the effect of authorising the operation of the installation or mobile plant or the carrying out of specified activities in the installation or by means of the mobile plant;
- (d) where any relevant permit is to continue to have the effect of authorising the carrying out of activities, state any steps, in addition to those already required to be taken by the conditions of the permit, that are to be taken in carrying out those activities; and
- (e) be in writing.

(5) Where a suspension notice is served under this regulation any relevant permit shall, on the service of the notice, cease to have effect as stated in the notice.

(6) The enforcing authority may withdraw a suspension notice at any time, by further notice served on the operator, and shall withdraw a notice when it is satisfied—

- (a) in the case of a notice served under paragraph (1), that the steps required by the notice to remove the imminent risk of serious pollution have been taken; and
- (b) in the case of a notice served under paragraph (3), that the management of the specified waste management activities is in the hands of a technically competent person.

## **Power of the enforcing authority to prevent or remedy pollution**

**29.**—(1) If the enforcing authority is of the opinion, in respect of the operation of an installation or mobile plant authorised under these Regulations, that the operation of the installation or mobile plant, or the operation of it in a particular manner, involves an imminent risk of serious pollution, the enforcing authority may arrange for steps to be taken to remove that risk.

(2) Where the commission of an offence under regulation 36(1)(a), (b) or (d) causes any pollution the enforcing authority may arrange for steps to be taken towards remedying the effects of the pollution.

(3) An enforcing authority which intends to arrange for steps to be taken under paragraph (2) shall, at least seven days before the steps are taken, notify the operator in writing of the steps that are to be taken.

(4) Subject to paragraph (5), where an enforcing authority arranges for steps to be taken under this regulation it may recover the cost of taking those steps from the operator concerned.

(5) No costs shall be recoverable under paragraph (4) where the enforcing authority arranges for steps to be taken under paragraph (1) if the operator shows that there was no imminent risk of serious pollution requiring any such steps to be taken and no other costs shall be recoverable which the operator shows to have been unnecessarily incurred by the enforcing authority.

### **Powers of inspectors and others**

**30.**—(1) An inspector may, on production (if so required) of his authority, exercise any of the powers in paragraph (3) for the purpose of—

- (a) determining whether any provisions of the pollution control statutory provisions in the case of an enforcing authority are being, or have been, complied with;
- (b) discharging one or more of the functions conferred or imposed on an enforcing authority by or under the pollution control statutory provisions; or
- (c) determining whether and, if so, how such a function should be discharged.

(2) Those powers, so far as exercisable in relation to premises, are exercisable in relation to premises on which activities listed—

- (a) in Part 1 of Schedule 1 are, or are believed (on reasonable grounds) to be carried out;
- (b) in Part 1 of Schedule 1 have, or are believed (on reasonable grounds) to have, been carried out (whether or not the activities were so listed when they were carried out), the condition of which is believed (on reasonable grounds) to be such as to give rise to a risk of serious pollution; and
- (c) in Schedule 1 to the Greenhouse Gas Emissions Trading Scheme Regulations 2005<sup>(3)</sup> are or have been, or are believed (on reasonable grounds) to be or to have been, carried out.

(3) The powers of the inspector are—

- (a) to enter at any reasonable time (or, in an emergency, at any time and, if need be, by force) any premises which he has reason to believe it is necessary for him to enter;
- (b) on entering any premises by virtue of sub-paragraph (a) to take with him—
  - (i) any person duly authorised by the chief inspector or the district council and, if the inspector has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and
  - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
- (c) to make such examination and investigation as may in any circumstances be necessary;
- (d) as regards any premises which he has power to enter, to direct that those premises or any part of them or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (f) to take samples of any articles or substances found in or on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;
- (g) in the case of any article or substance found in or on any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to

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(3) [S.I. 2005 No. 925](#)

cause pollution, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is necessary);

(h) in the case of any such article or substance as is mentioned in sub-paragraph (g), to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—

(i) to examine it and do to it anything which he has power to do under that sub-paragraph;

(ii) to ensure that it is not tampered with before his examination of it is completed; and

(iii) to ensure that it is available for use as evidence in any proceedings for an offence under regulation 36 or 37 or any other proceedings relating to a permit;

(i) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers;

(j) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which are required to be kept under the pollution control statutory provisions or which it is necessary for him to see for the purposes of an examination or investigation under sub-paragraph (c) and to inspect and take copies of, or of any entry in, the records;

(k) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any powers conferred on him by this regulation; and

(l) any other power for the purpose mentioned in paragraph (1) which is conferred by regulations made by the Department.

(4) The powers, which under paragraphs (1) and (3) are conferred in relation to any premises for the purpose of enabling an enforcing authority to determine whether any provision of the pollution control statutory provisions in the case of that enforcing authority is being, or has been, complied with, shall include power, in order to obtain the information on which that determination may be made—

(a) to carry out experimental borings or other works on those premises; and

(b) to install, keep or maintain monitoring and other apparatus there.

(5) Except in an emergency, in any case where it is proposed to take heavy equipment on to any premises which are to be entered, any entry by virtue of this regulation shall only be effected—

(a) after the expiration of at least 7 days' notice in writing of the proposed entry given to a person who appears to the inspector to be in occupation of the premises in question; and

(b) either—

(i) with the consent of a person who is in occupation of those premises; or

(ii) under the authority of a warrant by virtue of Schedule 14.

(6) Except in an emergency, where an inspector proposes to enter any premises and—

(a) entry has been refused and he apprehends on reasonable grounds that the use of force may be necessary to effect entry; or

(b) he apprehends on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry,

any entry on those premises by virtue of this regulation shall only be effected under the authority of a warrant by virtue of Schedule 14.

(7) Where an inspector proposes to exercise the power conferred by paragraph (3)(g) in the case of any article or substance found on any premises, he shall, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(8) Before exercising the power conferred by paragraph (3)(g) in the case of any article or substance, an inspector shall consult—

- (a) such persons having duties on the premises where the article or substance is to be dismantled or subjected to the process or test; and
- (b) such other persons,  
as appear to them appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power.

(9) No answer given by a person in pursuance of a requirement imposed under paragraph (3)(i) shall be admissible in evidence against that person in any proceedings.

(10) Nothing in this regulation shall be taken to compel the production by any person of a document of which that person would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court.

(11) In this regulation and Schedule 14—

“emergency” means a case in which it appears to the inspector in question—

- (a) that there is an immediate risk of serious pollution; or
- (b) that circumstances exist which are likely to endanger life or health,  
and that immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or to effect a remedy;

“pollution control statutory provisions” means—

- (a) the Environment (Northern Ireland) Order 2002 and regulations made thereunder;
- (b) the Planning (Control of Major Accident Hazards) Regulations (Northern Ireland) 2000<sup>(4)</sup>;
- (c) the Greenhouse Gas Emissions Trading Scheme Regulations 2005; or
- (d) regulations made under section 2(2) of the European Communities Act 1972<sup>(5)</sup> to the extent that those regulations relate to pollution;

“premises” includes any land, vehicle or vessel; and

“vehicle” means any motor vehicle or trailer within the meaning of the Road Traffic (Northern Ireland) Order 1981<sup>(6)</sup>.

(12) Schedule 14 shall have effect with respect to the powers of entry and related powers which are conferred by this regulation.

(13) This regulation and Schedule 14 apply (with appropriate modifications) in relation to mobile plant as they apply to premises.

(14) Nothing in section 98 of the Local Government Act (Northern Ireland) 1972<sup>(7)</sup> shall apply to functions conferred on a district council under these Regulations.

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(4) S.R. 2000 No. 101

(5) 1972 c.68

(6) S.I. 1981/154 (N.I. 1)

(7) 1972 c.9 (N.I.)

