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STATUTORY RULES OF NORTHERN IRELAND

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**2009 No. 252**

**The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009**

**PART 4**

**Enforcement**

**Powers of authorised persons**

**26.**—(1) An “authorised person” means a person who is authorised in writing by the enforcing authority for the purposes of this regulation.

(2) An authorised person may, on production of an authority under paragraph (1), exercise any of the powers specified in paragraph (3) for the purpose of discharging one or more of the functions conferred or imposed on the enforcing authority by these Regulations.

(3) The powers of an authorised person are—

- (a) to enter at any time any land where there is reason to believe it is necessary to enter;
- (b) on entering any land by virtue of sub-paragraph (a)—
  - (i) to be accompanied by any other person including, if the authorised person has reasonable cause to apprehend any serious obstruction, a constable; and
  - (ii) to take 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 land subject to power of entry, to direct that that land or any part of it, or anything in it, 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 may in any circumstances be necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (f) to take samples, or cause samples to be taken, of any articles or substances found in or on any land or of the air in the vicinity of the land;
- (g) in the case of any article or substance found in or on any land subject to power of entry, being an article or substance which appears to have caused or to be likely to cause damage to the environment, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that 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, or cause it to be examined, and to do, or cause to be done, to it anything which is necessary under that sub-paragraph;
  - (ii) to ensure that it is not tampered with before examination of it is completed;
  - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations or in any other proceedings relating to a notification or notice under these Regulations;
- (j) to remove any living or dead species found in or on any land and to cause any such species to be photographed, examined or subjected to testing as necessary by suitably qualified persons but not so as to injure it or destroy it unless destruction is necessary in the interests of its welfare;
  - (k) in the case of the removal of any living species to cause it to be treated by suitably qualified persons so as to protect its health and welfare;
  - (l) to require any person whom there is reasonable cause to believe capable of giving 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 authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of such answers;
  - (m) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which it is necessary 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;
  - (n) to require any person to afford 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 authorised person to exercise any of the powers conferred by this regulation.
- (4) No answer given by a person in pursuance of a requirement imposed under paragraph (3)(l) shall be admissible in evidence against that person in any proceedings.
- (5) The powers which are conferred under paragraphs (2) and (3) extend to all areas to which these Regulations apply.
- (6) The powers which under paragraphs (2) and (3) are conferred in relation to any land for the purpose of enabling the enforcing authority to determine whether any provision of these Regulations 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 that land; and
  - (b) to install, keep or maintain monitoring and other apparatus there.
- (7) In any case where it is proposed to enter any land used for residential purposes, or to take heavy equipment on to any land which is to be entered, any entry by virtue of this regulation shall only be effected either—
- (a) with the consent of a person who is in occupation of that land; or
  - (b) under the authority of a warrant.
- (8) Where an authorised person proposes to enter any land and—
- (a) entry has been refused and there are reasonable grounds to apprehend that the use of force may be necessary to effect entry; or
  - (b) it is apprehended 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 to that land by virtue of this regulation shall only be effected under the authority of a warrant.

(9) Any reference in this regulation to land shall be construed so as to include a reference to the foreshore, sea bed and subsoil and their natural resources and territorial waters adjacent to Northern Ireland.

(10) An authorised person enforcing these Regulations in relation to the territorial waters adjacent to Northern Ireland may, at any time, board and inspect a vessel or marine installation.

(11) For the purposes of exercising any power conferred by paragraph (2), the authorised person may require a vessel or marine installation—

- (a) to stop; or
- (b) to do anything else that will facilitate the boarding of that or any other vessel or marine installation.

(12) An authorised person who has boarded a vessel or marine installation may, for the purposes of disembarking from the vessel or installation, require that or any other vessel or marine installation—

- (a) to stop; or
- (b) to do anything else that will enable the authorised person, and any person accompanying the authorised person, to disembark from the vessel or installation.

(13) An authorised person may require any person on board a vessel or marine installation to afford such facilities and assistance with respect to matters under that person's control as the authorised person considers would facilitate the exercise of any power conferred by this regulation.

(14) Failure to comply with instructions given under this regulation or providing false or misleading information or obstructing an authorised person in performing any duty under these Regulations is an offence.

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