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DRAFT STATUTORY INSTRUMENTS

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**2011 No.**

**The Waste (England and Wales) Regulations 2011**

**PART 10**

**Enforcement**

**Interpretation**

**36.** In this Part—

- “the 1989 Act” means the Control of Pollution (Amendment) Act 1989(1);
- “compliance notice” has the meaning given in regulation 38(1);
- “regulation authority” has the meaning given in section 9 of the 1989 Act(2);
- “restoration notice” has the meaning given in regulation 40(1);
- “specified person” has the meaning given in regulation 24(5);
- “stop notice” has the meaning given in regulation 39(1).

**Enforcement authority**

**37.** The Environment Agency enforces Part 5 and regulation 25.

**Compliance notices**

**38.—**(1) A “compliance notice” is a notice requiring a person to take specified steps within a specified period to secure that a contravention does not continue or recur.

(2) If the Environment Agency considers that a person has contravened or is contravening regulation 12(1), 13(1), 14(1) or 25 it may serve a compliance notice on that person.

(3) If a regulation authority considers that a person has contravened or is contravening section 1 of the 1989 Act it may serve a compliance notice on that person.

(4) A compliance notice must—

- (a) state the authority’s reason for serving it;
- (b) specify the matters constituting the contravention;
- (c) specify the steps which must be taken to secure that the contravention does not continue or recur;
- (d) specify the period within which those steps must be taken;
- (e) give information as to the rights of appeal (including the period within which an appeal must be brought).

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(1) 1989 c.14.

(2) Section 9 was amended in relation to the definition of “regulation authority” by the Environmental Protection Act 1990 (c. 43), section 120 and paragraph 37 of Schedule 22, by the Anti-social Behaviour Act 2003 (c. 38), section 55 and by Part 1 of Schedule 4 to these Regulations.

### Stop notices

**39.**—(1) A “stop notice” is a notice prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.

(2) If the Environment Agency considers that a person is carrying on an activity in contravention of regulation 12(1), 13(1), 14(1) or 25 it may serve a stop notice on that person.

(3) If a regulation authority considers that a person is carrying on an activity in contravention of section 1 of the 1989 Act it may serve a stop notice on that person.

(4) A stop notice must—

- (a) state the authority’s reason for serving it;
- (b) specify the matters constituting the contravention;
- (c) specify the steps which must be taken to remedy the contravention;
- (d) give information as to the rights of appeal (including the period within which an appeal must be brought).

### Restoration notices

**40.**—(1) A “restoration notice” is a notice requiring a person to take specified steps within a specified period to secure that the position is, so far as possible, restored to what it would have been if a contravention had not occurred.

(2) If the Environment Agency considers that a person has contravened regulation 14(1) it may serve a restoration notice on that person.

(3) A restoration notice must—

- (a) state the Environment Agency’s reason for serving it;
- (b) specify the matters constituting the contravention;
- (c) specify the steps which must be taken to secure restoration, so far as possible;
- (d) specify the period within which those steps must be taken;
- (e) give information as to the rights of appeal (including the period within which an appeal must be brought).

### Appeals

**41.**—(1) A person on whom a compliance notice, stop notice or restoration notice is served may appeal against the decision to serve it.

(2) The grounds for appeal are—

- (a) that the decision was wrong in fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unreasonable;
- (d) that any step specified in the notice is unreasonable;
- (e) any other reason.

(3) The right of appeal is to the First-tier tribunal(3).

(4) The tribunal must determine the standard of proof.

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(3) Appeals are assigned to the General Regulatory Chamber of the tribunal by article 3 of S.I. 2010/2655. Procedural rules relating to such appeals are set out in S.I. 2009/1976 (amended by S.I. 2010/2653). Appeals must be brought within 28 days of the date on which notice of the act or decision to which the proceedings relate was sent to the appellant: see rule 22(1)(b).

(5) A notice, and any requirement in a notice, is not suspended pending an appeal unless the tribunal directs otherwise.

(6) The tribunal may—

- (a) withdraw the requirement or notice;
- (b) confirm the requirement or notice;
- (c) vary the requirement or notice;
- (d) take such steps as the authority serving the notice could take in relation to the act or omission giving rise to the requirement or notice;
- (e) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the authority.

### **Offence and penalties**

**42.**—(1) A person is guilty of an offence who—

- (a) if they are not a specified person, fails to comply with regulation 25; or
- (b) fails to comply with a compliance notice, stop notice or restoration notice.

(2) A person guilty of an offence under—

- (a) paragraph (1)(a); or
- (b) paragraph (1)(b) in relation to contravention of regulation 25,

is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) A person guilty of an offence under paragraph (1)(b) in relation to contravention of regulation 12(1), 13(1) or 14(1) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

### **Proceedings against partnerships and unincorporated associations**

**43.**—(1) Proceedings for an offence under regulation 42(1) alleged to have been committed by a partnership or unincorporated association may be brought against the partnership or association in the name of the partnership or association.

(2) For the purposes of such proceedings the following apply as if the partnership or unincorporated association were a body corporate—

- (a) rules of court relating to the service of documents; and
- (b) section 33 of the Criminal Justice Act 1925(4) and Schedule 3 to the Magistrates' Courts Act 1980(5).

(3) A fine imposed on a partnership or unincorporated association is to be paid out of the funds of the partnership or association.

### **Offences by bodies corporate, partnerships and unincorporated associations**

**44.**—(1) Where a body corporate is guilty of an offence under regulation 42(1), and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate; or

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(4) 1925 c. 86.

(5) 1980 c. 43.

(b) any person who was purporting to act in any such capacity,  
that person, as well as the body corporate, is guilty of the offence.

(2) In paragraph (1) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Where a partnership is guilty of an offence under regulation 42(1), and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of a partner, the partner, as well as the partnership, is guilty of the offence.

(4) In paragraph (3) “partner” includes a person purporting to act as a partner.

(5) Where an unincorporated association is guilty of an offence under regulation 42(1), and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of an officer of the association, that officer, as well as the association, is guilty of the offence.

(6) In paragraph (5) “officer”, in relation to an unincorporated association, means—

- (a) an officer of the association or a member of its governing body; or
- (b) a person purporting to act in such a capacity.

#### **Proceedings for contravention of section 1 of the Control of Pollution (Amendment) Act 1989**

**45.** A regulation authority must not institute proceedings against a specified person for contravention of section 1 of the 1989 Act unless—

- (a) the authority has served a compliance notice or stop notice on the person in respect of the contravention; and
- (b) the person has failed to comply with the notice.