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DRAFT STATUTORY INSTRUMENTS

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**2020 No.**

**The Air Quality (Domestic Solid Fuels Standards) (England) Regulations 2020**

**PART 6**

**Enforcement**

**Enforcement body**

**16.**—(1) These Regulations are to be enforced by the relevant local authority.

(2) In this Part “the relevant local authority” is—

- (a) in the case of a relevant solid fuel supplied at a place in England where such a fuel is sold, for the purpose of enabling the goods to be taken away, the local authority with responsibility for the area in which the fuel is sold;
- (b) in the case of a relevant solid fuel dispatched from a place in England, in the course of the delivery of such a fuel to a person in England, the local authority with responsibility for the area from which the fuel is dispatched;
- (c) in the case of a relevant solid fuel dispatched from a place outside England, in the course of the delivery of such a fuel to a person in England, the local authority with responsibility for the area for to which the fuel is to be delivered.

(3) In this regulation—

“local authority” means—

- (a) the Common Council for the City of London;
- (b) a London Borough Council;
- (c) the Council of the Isles of Scilly;
- (d) a county council;
- (e) a district council for an area in which there is no county council.

(4) A local authority may appoint an officer to discharge its enforcement functions under these Regulations.

**Powers of enforcement**

**17.**—(1) An officer of a relevant local authority may, for the purposes of enforcing these Regulations—

- (a) enter a supplier’s premises at any reasonable time;
- (b) inspect a supplier’s goods;
- (c) make test purchases of a supplier’s goods;
- (d) require a supplier to produce documents or to provide information;

- (e) question a supplier or officers or employees of a supplier.
- (2) An officer of a relevant local authority may only exercise the powers in paragraph (1)(d) or (e) if they reasonably believe that an offence under these Regulations has been committed.
- (3) An officer of a relevant local authority seeking to exercise a power under paragraph (1) must produce evidence of their identity and authority if requested by a person who is, or appears to be—
  - (a) the supplier, or an officer or employee of the supplier;
  - (b) the owner or occupier of any premises in which the officer seeks to exercise the power concerned.
- (4) Any person who intentionally obstructs an officer of a relevant local authority in the exercise of a power under this regulation is guilty of an offence and liable on summary conviction to a fine.
- (5) Nothing in paragraph (1) compels—
  - (a) any disclosure of information which is prohibited by or under the data protection legislation, but where that prohibition arises because the information is in a form which allows for the identification of an individual, the person authorised by the local authority may require that information to be put in a form which does not allow for the identification of that individual;
  - (b) the supplying or production of a document which, in England and Wales, the person would be entitled to withhold production of in relation to an order for discovery in an action in the County Court or the High Court on the grounds of legal professional privilege.
- (6) In this regulation—
  - (a) “the data protection legislation” has the same meaning as in the Data Protection Act 2018(1) (see section 3 of that Act);
  - (b) “premises” means premises other than those used wholly or mainly as a private dwelling.

### **Fixed penalties**

**18.—**(1) An officer of a relevant local authority who has reason to believe that a person has committed an offence under these Regulations may issue that person a penalty notice in respect of the offence.

(2) A penalty notice is a notice offering a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a penalty in accordance with this Part.

### **Contents of a penalty notice**

- 19.—**(1) A penalty notice must—
- (a) state the alleged offence; and
  - (b) give such particulars of the circumstances alleged to constitute it as are necessary for giving reasonable information about it.
- (2) A penalty notice must also state—
- (a) the name and address of the relevant local authority on whose behalf the officer of the authority was acting when the notice was given;
  - (b) the amount of the penalty and the period for its payment;
  - (c) the consequences of not paying the penalty before the end of the period mentioned in paragraph (b);

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(1) 2018 c. 12.

- (d) the relevant local authority to whom, and the address at which, payment may be made;
  - (e) by what method payment may be made;
  - (f) the relevant local authority to whom, and the address at which, any representations relating to the notice may be made.
- (3) A penalty notice must also—
- (a) inform the person to whom it is issued of that person’s right to be tried for the alleged offence; and
  - (b) explain how that right may be exercised.

### **Amount of penalty and period for payment**

**20.**—(1) The penalty is £300 in respect of the offence in respect of which the penalty notice was issued.

(2) The period for payment of the penalty is the period of 28 days beginning with the day on which the notice is issued.

(3) An unpaid fixed penalty may be enforced by a local authority as a fine, a civil debt or as if it were a sum payable under a county court order.

### **Effect of notice and payment**

**21.**—(1) Proceedings for the offence in respect of which a penalty notice is given may not be brought before the end of the period for payment of the penalty mentioned in regulation 20(2).

(2) Paragraph (1) does not apply if the person to whom the notice is given asks in accordance with regulation 22 to be tried for the alleged offence.

(3) If the penalty is paid in accordance with the penalty notice before the end of the period mentioned in regulation 20(2), no proceedings for the offence may be brought, and regulation 22 does not apply.

(4) If proceedings have been brought pursuant to a request under regulation 22, but then the penalty is paid as mentioned in paragraph 20(1), those proceedings may not be continued.

### **Trial**

**22.**—(1) If the person to whom a penalty notice has been given asks to be tried for the alleged offence, or fails to pay a penalty before the end of the period for payment mentioned in regulation 19(2), proceedings may be brought against that person.

(2) Any request to be tried must be made—

- (a) by notice given to the relevant local authority before the end of the period for payment of the penalty;
- (b) in the manner specified in the penalty notice.

### **Withdrawal of notices**

**23.**—(1) This regulation applies if a relevant local authority considers that a penalty notice which an authorised officer acting on its behalf has given to a person (“P”) ought not to have been given.

(2) The relevant local authority may give a notice to P withdrawing the penalty notice.

(3) If it does so—

- (a) it must repay any amount which has been paid by way of penalty in pursuance of the penalty notice; and

(b) no proceedings may be brought or continued against P for the offence in question.

**Recovery by local authority of the reasonable costs of enforcing these Regulations**

**24.** A local authority may recover the expenses reasonably incurred by it in enforcing these Regulations from a person in respect of whom it has taken any action under these Regulations.