

STATUTORY INSTRUMENTS

**2005 No. 894**

The Hazardous Waste (England and Wales) Regulations 2005

**PART 10**

ENFORCEMENT

**Enforcement**

**64.**—(1) Subject to paragraph (2), it is the duty of the Agency to enforce these Regulations.

(2) Paragraph (1) is without prejudice to any right of action which any person may have arising apart from these Regulations, or any other right, power or duty of any person either at law or arising pursuant to any agreement or arrangement (expressly or impliedly) or in consequence of any act or omission.

**Offences**

**[<sup>F1</sup>65.** It is an offence for a person to fail to comply with any requirement imposed on them by or under any of the following provisions of these Regulations—

- (a) Part 4;
- <sup>F2</sup>(b) .....
- (c) regulations 34 to [<sup>F3</sup>43];
- (d) regulation 46 and Schedule 7;
- (e) Part 7 (except regulation 52);
- (f) regulation 62.]

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| <p><b>F1</b> Reg. 65 substituted (1.2.2008) by <a href="#">The Waste and Air Pollution (Miscellaneous Amendments) Regulations 2007 (S.I. 2007/3476)</a>, regs. 1(1), <b>3(2)</b></p> <p><b>F2</b> Reg. 65(b) omitted (1.4.2016) by virtue of <a href="#">The Hazardous Waste (England and Wales) (Amendment) Regulations 2016 (S.I. 2016/336)</a>, regs. 1, <b>2(5)</b></p> <p><b>F3</b> Word in reg. 65(c) substituted (29.3.2011) by <a href="#">The Waste (England and Wales) Regulations 2011 (S.I. 2011/988)</a>, reg. 1(2), <b>Sch. 2 para. 25</b> (with regs. 2, 47(2))</p> |
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**[<sup>F4</sup>Civil sanctions**

**65A.**—(1) The Environment Agency may impose a variable monetary penalty, restoration notice, compliance notice or stop notice, or accept an enforcement undertaking, in relation to an offence under regulation 68 or under regulation 65 for a failure to comply with a provision in the following Table of civil sanctions, as indicated in that Table, as if it were an offence under a provision specified in relation to that sanction in Schedule 5 to the Environmental Civil Sanctions (England) Order 2010.

**Changes to legislation:** There are currently no known outstanding effects for the The Hazardous Waste (England and Wales) Regulations 2005, PART 10. (See end of Document for details)

Table of civil sanctions

<i>Offence under these Regulations</i>	<i>Variable monetary penalty</i>	<i>Restoration notice</i>	<i>Compliance notice</i>	<i>Stop notice</i>	<i>Enforcement undertaking</i>
regulation 19	Yes	Yes	Yes	Yes	Yes
regulation 20	Yes	Yes	Yes	Yes	Yes
F5	F5	F5	F5	F5	F5
...	...	...	...	...	...
regulation 34	Yes	No	Yes	No	Yes
regulations 35 to [F643]	Yes	No	Yes	No	Yes
regulation 46 and Schedule 7	Yes	No	Yes	No	Yes
regulation 47	Yes	No	Yes	No	Yes
regulation 48	Yes	No	Yes	No	Yes
regulation 49	Yes	No	Yes	No	Yes
regulation 50	Yes	No	Yes	No	Yes
regulation 51	Yes	No	Yes	No	Yes
regulation 53	Yes	No	No	No	Yes
regulation 54	Yes	No	No	No	Yes
regulation 55	Yes	No	No	No	No
regulation 62	Yes	Yes	Yes	Yes	No
regulation 68	Yes	No	No	No	No

(2) The terms used in this regulation have the same meaning as in that Order.

(3) The provisions of that Order in relation to those sanctions apply as if they were provisions of these Regulations.

(4) This regulation applies only in England.]

**F4** Reg. 65A inserted (6.4.2010) by [The Environmental Civil Sanctions \(Miscellaneous Amendments\) \(England\) Regulations 2010 \(S.I. 2010/1159\)](#), regs. 1, **6**

**F5** Words in reg. 65A(1) omitted (1.4.2016) by virtue of [The Hazardous Waste \(England and Wales\) \(Amendment\) Regulations 2016 \(S.I. 2016/336\)](#), regs. 1, **2(6)**

**F6** Word in reg. 65A(1) substituted (29.3.2011) by [The Waste \(England and Wales\) Regulations 2011 \(S.I. 2011/988\)](#), reg. 1(2), **Sch. 2 para. 26** (with regs. 2, 47(2))

## Defences

**66.** It shall be a defence for a person charged with an offence under regulation 65 to prove that—

- (a) he was not reasonably able to comply with the provision in question by reason of an emergency or grave danger and that he took all steps as were reasonably practicable in the circumstances for—

- (i) minimising any threat to the public or the environment; and
  - (ii) ensuring that the provision in question was complied with as soon as reasonably practicable after the event; or
- (b) if there is no emergency or grave danger he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

**Liability of persons other than the principal offender**

67.—(1) Where the commission by any person of an offence under this Part is due to the act or default of some other person, that other person may be charged with and convicted of an offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where an offence under this Part which has been committed by a body corporate 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 director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

**False and misleading information**

68.—(1) Any person who, in purported compliance with a requirement imposed by or under any of the foregoing provisions of these Regulations to furnish any information, makes a statement which he knows to be false or misleading in a material particular, or recklessly makes any statement which is false or misleading in a material particular, commits an offence.

(2) A person who intentionally makes a false entry in any record or register required to be kept by virtue of any of the foregoing provisions of these Regulations commits an offence.

**Penalties**

69.—(1) A person who commits an offence under regulation 65 in connection with any of the following regulations—

- <sup>F7</sup>(a) .....
- <sup>F7</sup>(b) .....
- <sup>F7</sup>(c) .....
- (d) regulation 34 (consignment codes);
- (e) regulations 35 to [<sup>F8</sup>43] (consignment notes);
- (f) regulation 46 and Schedule 7 (cross border consignments);
- (g) regulation 53 (consignee and self-disposal quarterly returns);
- (h) regulation 54 (consignee's return to the producer, holder or consignor); or
- (i) regulation 55 (duties to supply information).

shall be liable on summary conviction, to a fine not exceeding level 5 on the standard scale.

(2) A person who commits an offence under regulation 65 or 68 in connection with any other requirement under these Regulations shall be liable—

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

- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

- F7** Reg. 69(1)(a)-(c) omitted (1.4.2016) by virtue of [The Hazardous Waste \(England and Wales\) \(Amendment\) Regulations 2016 \(S.I. 2016/336\)](#), regs. 1, **2(7)**
- F8** Word in reg. 69(1)(e) substituted (29.3.2011) by [The Waste \(England and Wales\) Regulations 2011 \(S.I. 2011/988\)](#), reg. 1(2), **Sch. 2 para. 27** (with regs. 2, 47(2))

### Fixed penalties

**70.**—(1) Where an authorised person acting on behalf of the Agency has reason to believe that a person has committed an offence under regulation 65 to which this regulation applies, he may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

(2) This regulation applies to an offence consisting of—

- (a) a failure to comply with any requirement of; or  
 (b) making a false or misleading statement in purported compliance with,

any of the regulations listed in regulation 69(1)(a) to (i).

(3) Where a person is given a notice under this regulation in respect of an offence—

- (a) no proceedings shall be instituted for that offence before the expiration of twenty eight days following the date of the notice; and  
 (b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period.

(4) A notice under this regulation shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence and shall state—

- (a) the period during which, by virtue of paragraph (3), proceedings will not be taken for the offence;  
 (b) the amount of the fixed penalty;  
 (c) the name of the person to whom and the address at which the fixed penalty may be paid.

(5) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).

(6) Where a letter is sent in accordance with paragraph (5) payment shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(7) A fixed penalty notice issued pursuant to this section shall be in the form set out in Schedule 10.

(8) The fixed penalty payable in pursuance of a notice under this regulation shall be £300; and as respects the sums received by or on behalf of the Agency, those sums shall be paid to the Secretary of State.

(9) In any proceedings a certificate which—

- (a) purports to be signed by or on behalf of the chief finance officer of the Agency;  
 (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

shall be evidence of the facts stated.

(10) In paragraph [F9(9)], “chief finance officer” means the person having responsibility for the financial affairs of the Agency.

**F9** Word in reg. 70(10) substituted (6.4.2009) by [The Hazardous Waste \(England and Wales\) \(Amendment\) Regulations 2009 \(S.I. 2009/507\)](#), regs. 1(c), **16**

**Changes to legislation:**

There are currently no known outstanding effects for the The Hazardous Waste (England and Wales) Regulations 2005, PART 10.