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STATUTORY INSTRUMENTS

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**2013 No. 1506**

**The Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013**

**PART 3**

**CHAPTER 1**

**CHAPTER 3**

**EXPORT AND IMPORT OF HAZARDOUS CHEMICALS**

**Application of the 1974 Act**

**19.**—(1) The provisions of the 1974 Act specified in paragraph (2) shall apply for the purposes of the enforcement in Great Britain of regulation 28 and the PIC Regulation as if they were health and safety regulations for the purposes of that Act, and any function of the Great Britain Executive under any provision of that Act in respect of health and safety regulations (including their enforcement) shall be exercisable as if regulation 28 and the PIC Regulation were, to the extent that they would not otherwise be so, health and safety regulations for the purposes of that Act.

(2) The provisions referred to in paragraph (1) are—

- (a) sections 19 and 20 (appointment and powers of inspectors);
- (b) section 21 (improvement notices) and sections 23 and 24 (supplementary provisions and appeals) to the extent that they relate to an improvement notice served under section 21;
- (c) section 25A to 28 (customs officer's power to detain articles and substances, power to indemnify inspectors, power to obtain information, information communicated by the Commissioners of Revenue and Customs and restrictions on disclosure of information); and
- (d) subject to regulations 32 and 33(1), sections 33 to 42 (provisions as to offences).

(3) For the purposes of paragraph (1)—

- (a) section 25A shall have effect as if, in subsection (1) of that section, after the word “substance” there were inserted “or any article bound for export or any substance bound for export”; and
- (b) section 27A shall have effect as if, in subsection (1) of that section, after “imports” there were inserted “or exports”.

**Application of the 1978 Order**

**20.**—(1) The provisions of the 1978 Order specified in paragraph (2) shall apply for the purposes of the enforcement in Northern Ireland of regulation 28 and the PIC Regulation as if they were health and safety regulations for the purposes of that Order, and any function of the Northern Ireland Executive under any provision of that Order in respect of health and safety regulations (including

their enforcement) shall be exercisable as if regulation 28 and the PIC Regulation were, to the extent that they would not otherwise be so, health and safety regulations for the purposes of that Order.

- (2) The provisions referred to in paragraph (1) are—
- (a) Articles 21 and 22 (appointment and powers of inspectors);
  - (b) Articles 23 (improvement notices), and Articles 25 and 26 (supplementary provisions and appeals) to the extent that they relate to an improvement notice served under Article 23;
  - (c) Articles 27A to 30 (customs officer's power to detain articles and substances, power to indemnify inspectors, power to obtain information, information communicated by the Commissioners of Revenue and Customs and restrictions on disclosure of information); and
  - (d) Subject to regulations 32 and 33(2), Articles 31 to 39 (provisions as to offences).
- (3) For the purposes of paragraph (1)—
- (a) Article 27A shall have effect as if, in paragraph (1) of that Article, after “substance”, there were inserted “or any article bound for export or any substance bound for export”; and
  - (b) Article 29A shall have effect as if, in paragraph (1) of that Article, after “imports”, there were inserted “or exports”.

#### **Duties on designated national authorities and Member States**

**21.** A failure to discharge a duty placed by the PIC Regulation on a designated national authority or the Member State is not an offence under section 33(1)(c) of the 1974 Act or under Article 31(1)(c) of the 1978 Order.

#### **Allocation of enforcement responsibility**

**22.** It shall be the duty of the Great Britain Executive and the Northern Ireland Executive to make adequate arrangements for the enforcement of regulation 28 and the PIC Regulation, and references to the enforcing authority in the provisions applied for those purposes by regulations 19 and 20 shall be construed as references to the Great Britain Executive and the Northern Ireland Executive.

#### **Enforcement notice**

**23.** If an inspector is of the opinion that a person has contravened, is contravening or is likely to contravene a requirement placed on that person by the PIC Regulation, the inspector may serve on that person an enforcement notice.

- 24.—(1)** An enforcement notice must—
- (a) state that the inspector is of the opinion referred to in regulation 23;
  - (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;
  - (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; and
  - (d) specify the period within which those steps must be taken.

(2) Steps specified pursuant to paragraph (1)(c) may include the prohibition of further movement or the recall of chemicals and articles.

**25.** An enforcement notice may contain provision prohibiting the export of chemicals and articles until steps specified under regulation 24(1)(c) have been taken or the notice has been withdrawn.

- 26.** Where an enforcement notice has been served but is not to take immediate effect—

- (a) the notice may be withdrawn by an inspector at any time before the end of the period specified therein;
- (b) the period so specified may be extended or further extended by an inspector at any time when an appeal against the notice is not pending.

**27.**—(1) A person on whom an enforcement notice is served may, within 21 days from the date of its service, appeal to—

- (a) an employment tribunal, where the notice is served by an inspector appointed under section 19 of the 1974 Act; or
- (b) an industrial tribunal established under Article 3 of the Industrial Tribunals (Northern Ireland) Order 1996(1), where the notice is served by an inspector appointed under Article 21 of the 1978 Order,

and on such an appeal the tribunal may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the tribunal in the circumstances thinks fit.

(2) Schedule 4 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004(2) applies to an appeal to an employment tribunal under paragraph (1)(a).

(3) An enforcement notice is to be treated under paragraph (2) in the same way as an improvement notice for the purposes of that Schedule.

(4) Schedule 5 to the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005(3) applies to an appeal to an industrial tribunal under paragraph (1)(b).

(5) An enforcement notice is to be treated under paragraph (4) in the same way as an improvement notice for the purposes of that Schedule.

(6) Subject to paragraph (7), the bringing of the appeal shall not affect the operation of the enforcement notice.

(7) Where an appeal under this regulation is brought against an enforcement notice within the period allowed under paragraph (1), the tribunal may, on the application of the appellant, direct that the bringing of the appeal shall have the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal.

**28.** A person shall not contravene any requirement or prohibition imposed by an enforcement notice (including any such notice as modified on appeal).

### **Service of enforcement notices**

**29.**—(1) Section 46 of the 1974 Act shall apply to an enforcement notice served by an inspector appointed under section 19 of the 1974 Act as if it were an improvement notice.

(2) Section 24 of the Interpretation Act (Northern Ireland) 1954(4)(service of documents) shall apply to regulations 23 to 27 in their application to Northern Ireland as if they were provisions of an Act of the Northern Ireland Assembly.

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(1) S.I. 1996/1921 (N.I. 18).

(2) S.I. 2004/1861.

(3) S.R. 2005 No. 150, as amended by S.R. 2005 No. 578 and S.R. 2011 No.161.

(4) 1954 c. 33 (N.I.).