
STATUTORY INSTRUMENTS

2013 No. 971

**The Offshore Combustion Installations (Pollution
Prevention and Control) Regulations 2013**

PART 6

Enforcement, appeals, and offences

Appointment of inspectors

24.—(1) The Secretary of State may authorise in writing a person who appears suitable (“an inspector”) to act on the Secretary of State’s behalf to exercise functions of the Secretary of State under these Regulations, subject to any limitations or conditions as the Secretary of State thinks fit.

(2) Unless the Secretary of State provides to the contrary, a person is an inspector for the purposes of paragraph (1) where that person is authorised as an inspector under regulation 13(1) of the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001(1).

Powers of inspectors

25. To assist in the exercise of the functions of the Secretary of State under these Regulations, an inspector may—

- (a) at any reasonable time (or in case of emergency, at any time) board any relevant platform, together with any equipment or material as may be required, and may be accompanied by any other person authorised by the Secretary of State;
- (b) make such examination and investigation as the inspector considers necessary and may install or maintain monitoring or other apparatus on the relevant platform;
- (c) direct that any part of the relevant platform be left undisturbed for so long as may be necessary to effect any examination or investigation;
- (d) take such measurements and photographs or record such information as the inspector considers necessary in relation to any examination or investigation;
- (e) take samples of any thing found on the relevant platform and of the atmosphere, land, seabed (including its subsoil) or water in the vicinity of the relevant platform;
- (f) in the case of any thing found on or in the vicinity of the relevant platform and which appears to the inspector to have caused, or to be likely to cause, significant pollution, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy the thing unless that is necessary);
- (g) take possession of any thing to which subparagraph (f) applies and detain it for so long as is necessary—
 - (i) to examine it and do to it anything provided by this regulation;
 - (ii) to ensure it is not tampered with before its examination is completed;

(1) [S.I. 2001/1091](#), to which there are various amendments, none of which affect regulation 13(1).

- (iii) to ensure that it is available for use as evidence in any proceedings for an offence under regulation 34;
- (h) require any person (“P1”) whom the inspector has reasonable cause to believe is able to give information relevant to any examination or investigation—
 - (i) to attend at a place and time specified by the inspector;
 - (ii) to answer (in the absence of any persons other than those whom the inspector may allow to be present and a person nominated by P1) such questions as the inspector thinks fit to ask; and
 - (iii) to sign a declaration of truth of the answers given by P1;
- (i) require the production of, and inspect and take copies of, or any entry in,—
 - (i) any records which are required to be kept by virtue of these Regulations;
 - (ii) any records which the inspector considers it necessary to see for the purposes of any examination or inspection;
- and
- (j) require any person (“P2”) to afford the inspector such facilities and assistance with respect to any matter or thing within P2’s control or in relation to which P2 has responsibilities, as the inspector considers necessary to enable the exercise of any powers provided under this regulation.

Admissible evidence

26.—(1) An answer given by a person in compliance with a requirement imposed under regulation 25 is admissible in evidence in England and Wales or Northern Ireland against that person in any proceedings or, in Scotland, against that person in criminal proceedings.

(2) In criminal proceedings in which such person as is mentioned in paragraph (1) is charged with an offence to which this paragraph applies, no evidence relating to that person’s answer may be adduced and no question relating to it may be asked by or on behalf of the prosecution unless evidence relating to it is adduced by or on behalf of that person.

- (3) Paragraph (2) applies to any offence other than one under—
 - (a) regulation 34(2)(b);
 - (b) section 5 of the Perjury Act 1911⁽²⁾(false statements made otherwise than on oath);
 - (c) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995⁽³⁾(false statements made otherwise than on oath); or
 - (d) article 10 of the Perjury (Northern Ireland) Order 1979⁽⁴⁾(false statutory declarations and other false unsworn statements).
- (4) Nothing in regulation 25 compels the production by any person of a document which—
 - (a) except in relation to Scotland, that person would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the County Court, High Court or High Court in Northern Ireland; or
 - (b) in relation to Scotland, contains confidential information made by or to an advocate or solicitor in that capacity and which that person would be entitled to withhold production on an order for the production of documents in an action in the Court of Session.

⁽²⁾ 1911 c. 6.

⁽³⁾ 1995 c. 39.

⁽⁴⁾ S.I. 1979/1714 (N.I. 19).

Environmental inspection plans and programmes

27.—(1) The Secretary of State must ensure that an offshore combustion installation is covered by an environmental inspection plan.

(2) In paragraph (1), “environmental inspection plan” means a plan which includes the following—

- (a) a general assessment of relevant significant environmental issues;
- (b) the geographical area covered by the plan;
- (c) a register of the offshore combustion installations covered by the plan;
- (d) procedures for drawing up programmes for routine environmental inspections;
- (e) procedures for non-routine environmental inspections; and
- (f) where necessary, provisions on the cooperation between the Secretary of State and other persons or bodies responsible for inspection of relevant platforms.

(3) The Secretary of State must review regularly and keep up to date environmental inspection plans.

(4) Programmes for routine environmental inspections must—

- (a) be regularly drawn up by the Secretary of State;
- (b) be based on the environmental inspections plans; and
- (c) include the frequency of inspections.

Inspections

28.—(1) The Secretary of State must carry out routine inspections of offshore combustion installations in accordance with the programmes provided for under regulation 27(4).

(2) The frequency of inspections of offshore combustion installations must be based on a systematic appraisal by the Secretary of State of the environmental risks of the installations and, subject to paragraph (5), the period between inspections must not exceed—

- (a) one year, for installations posing the highest environmental risks; and
- (b) three years, for installations posing the lowest environmental risks.

(3) Where an inspection of an offshore combustion installation identifies important non-compliance with the conditions in the permit, a further inspection must be carried out within six months of that inspection.

(4) The systematic appraisal referred to in paragraph (2) must be based on at least the following—

- (a) the impact and potential impact of the offshore combustion installation on the environment, taking into account—
 - (i) the levels and types of emissions;
 - (ii) the sensitivity of the local environment; and
 - (iii) the risk of accidents;
- (b) the record of compliance by the operator with the conditions in the permit for the offshore combustion installation;
- (c) if applicable, whether or not the operator participates in EMAS⁽⁵⁾ or an equivalent scheme.

(5) EMAS is the eco-management and audit scheme established pursuant to EU Regulation 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (OJ L 342, 22.12.2009, p1).

(5) The Secretary of State must carry out non-routine inspections of offshore combustion installations as soon as possible to investigate—

- (a) complaints made to the Secretary of State of serious environmental incidents;
- (b) serious environmental accidents or incidents; or
- (c) occurrences of serious non-compliance by the operator with the conditions in the permit.

(6) Where appropriate, an inspection under paragraph (5) must take place before the Secretary of State decides whether or not to vary the conditions in a permit pursuant to regulations 12 or 13.

Reports further to inspections

29.—(1) The Secretary of State must prepare a report (“an inspection report”) after an inspection of an offshore combustion installation which describes—

- (a) the relevant findings of the inspection concerning the compliance by the operator with the conditions in the permit for that installation; and
- (b) the conclusions on whether or not any further action is required by the operator to ensure such compliance.

(2) The Secretary of State must take the necessary steps to ensure the operator carries out any such further action within a reasonable period.

(3) The Secretary of State must—

- (a) give a notice to the operator which includes a copy of the inspection report within two months of the date of the inspection giving rise to the report; and
- (b) make the inspection report publicly available within fourth months of the date of the inspection giving rise to the report.

Enforcement notices

30.—(1) If the Secretary of State is of the opinion that a person has contravened, is contravening or is likely to contravene the conditions in a permit, the Secretary of State may give that person an enforcement notice.

(2) An enforcement notice must—

- (a) state the opinion referred to in the preceding paragraph;
- (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.

(3) An enforcement notice may be varied or withdrawn at any time.

Prohibition notices

31.—(1) If the Secretary of State is of the opinion that the activities of a person, in relation to a contravention or likely contravention of the conditions in a permit, are such that they involve an imminent risk of serious pollution of the environment, the Secretary of State may give that person a prohibition notice.

(2) A prohibition notice must—

- (a) state the opinion referred to in the preceding paragraph;
- (b) specify the risk involved in the activity; and

- (c) specify the steps that must be taken to remove it and the period within which they must be taken.
- (3) A prohibition notice may be varied or withdrawn at any time.

Action by the Secretary of State on failure to comply with enforcement or prohibition notices

32. Where a person fails to comply with an enforcement notice or prohibition notice, the Secretary of State may—

- (a) do what that person was required to do; and
- (b) recover from that person any expenses reasonably incurred in doing so.

Appeals

33.—(1) This regulation applies to a decision (“a relevant decision”) made by the Secretary of State which is contained in a notice made under—

- (a) regulation 8(1) (granting and refusal of applications);
- (b) regulation 12(4) (variation of operation of offshore combustion installations);
- (c) regulation 14(6) (variation of conditions in permits following a review except further to regulation 13(2)(c));
- (d) regulation 15(8) (variation of conditions in permits following a review further to regulation 13(2)(c));
- (e) regulation 16(2) (revocation);
- (f) regulation 17(3) (surrenders);
- (g) regulation 18(2) (assignments).

(2) A person with a sufficient interest may appeal to the court against a relevant decision but must do so within 28 days of the date of the notice.

(3) A relevant decision remains in force until the court orders otherwise.

(4) In paragraph (2), “the court” means in respect of an offshore combustion installation situated in—

- (a) the English area, the High Court;
- (b) the Northern Ireland area, the High Court in Northern Ireland;
- (c) the Scottish area, the Court of Session.

(5) Where an offshore combustion installation is situated in more than one of the areas listed in paragraph (4), any of the courts which has jurisdiction for that area under paragraph (4) is “the court” for the purposes of paragraph (2).

(6) In this regulation “the English area”, “the Northern Ireland area” and “the Scottish area” have the same meaning as in the Civil Jurisdiction (Offshore Activities) Order 1987(6).

Offences

34.—(1) It is an offence for a person to operate an offshore combustion installation—

- (a) without a permit; or
- (b) in breach of the conditions in a permit.

(2) It is an offence for a person—

- (a) to fail to comply with an information notice, an enforcement notice or a prohibition notice;
 - (b) to make a statement—
 - (i) which that person knows to be false or misleading in a material particular; or
 - (ii) recklessly and which is false or misleading in a material particular,
 where the statement is made in purported compliance with a requirement to furnish any information imposed by or under these Regulations;
 - (c) intentionally to obstruct an inspector in the exercise or performance of the powers or duties of an inspector;
 - (d) to fail to comply with any requirement imposed pursuant to regulation 25;
 - or
 - (e) to prevent any other person from appearing before an inspector, or answering any question to which an inspector may require an answer.
- (3) It is a defence for a person (“A”) charged with an offence under paragraph (2) to prove that the contravention arose—
- (a) because of a matter which A could not have reasonably prevented; or
 - (b) by reason of something done as a matter of urgency and which was carried out for securing the safety of a person.
- (4) Where the commission by a person (“B”) of an offence under paragraph (1) or (2) is due to the act or default of another person (“C”), C may be charged with and convicted of the offence, whether or not proceedings for the offence are taken against B.
- (5) Proceedings for an offence under paragraph (1) or (2) may be taken, and the offence may be treated as having been committed, in any part of the United Kingdom.
- (6) Section 3 (restriction on institution of proceedings for punishment of offence) of the Territorial Waters Jurisdiction Act 1878(7) does not apply to any proceedings for an offence under paragraph (1) or (2).

Penalties

- 35.** A person guilty of an offence under regulation 34 is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.

Bodies corporate and Scottish partnerships

- 36.—**(1) Where an offence under regulation 34 is committed by a body corporate and—
- (a) it is committed with the consent or connivance of an officer; or
 - (b) it is attributable to any neglect on the officer’s part,
- the officer as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (2) “Officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.
- (3) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts or defaults of a member in connection with that member’s functions of management as if the member were a director of the body corporate.

(4) Where an offence under regulation 34 is committed by a Scottish partnership and—

- (a) it is committed with the consent or connivance of a partner; or
- (b) it is attributable to any neglect on the partner's part,

the partner as well as the partnership is guilty of the offence and is liable to be proceeded against and punished accordingly.

(5) In paragraph (4) "partner" includes a person purporting to act as a partner.