
STATUTORY INSTRUMENTS

2016 No. 1154

The Environmental Permitting
(England and Wales) Regulations 2016

PART 4

Enforcement and offences

Enforcement notices

36.—(1) If the regulator considers that an operator has contravened, is contravening, or is likely to contravene an environmental permit condition, the regulator may serve a notice on the operator.

(2) The notice must—

- (a) state the regulator’s view under paragraph (1),
- (b) specify the matters constituting the contravention or making a contravention likely,
- (c) specify the steps that must be taken to remedy the contravention or to ensure that the likely contravention does not occur, and
- (d) specify the period within which those steps must be taken.

(3) Steps that may be specified in the notice include steps—

- (a) to make the operation of a regulated facility comply with the environmental permit conditions, and
- (b) to remedy the environmental effects caused by the contravention.

(4) In paragraph (3)(b) “environmental effects” means—

- (a) in relation to a flood risk activity—
 - (i) flooding or risk of flooding;
 - (ii) detrimental impact on drainage or risk of detrimental impact on drainage;
 - (iii) harm to the environment or risk of harm to the environment;
- (b) in relation to any other class of regulated facility, the effects of pollution.

(5) In the case of a regulated facility to which Schedule 7, 13 or 14 applies, if the regulator considers that an incident or accident significantly affecting the environment has occurred as the result of the operation of that regulated facility, the regulator may serve a notice on the operator of that facility.

(6) A notice served under paragraph (5) must—

- (a) specify the measures necessary to limit the environmental consequences of the incident or accident, and
- (b) specify the measures necessary to prevent further incidents or accidents.

(7) The regulator may withdraw a notice under this regulation at any time by further notice served on the operator.

Suspension notices

37.—(1) The regulator may suspend an environmental permit by serving a notice (a “suspension notice”) on the operator under this regulation.

(2) If the regulator considers that the operation of a regulated facility under an environmental permit involves a risk of serious pollution or, in the case of a flood risk activity, a risk specified in paragraph (3), it may serve a suspension notice on the operator.

(3) The following are risks specified for the purposes of paragraph (2)—

- (a) risk of serious flooding;
- (b) risk of serious detrimental impact on drainage;
- (c) risk of serious harm to the environment.

(4) Paragraph (2) applies whether or not the manner of operating the regulated facility which involves the risk is subject to or contravenes an environmental permit condition.

(5) If the regulator considers that the manner of operating a regulated facility contravenes an environmental permit condition, and that such contravention involves a risk of pollution or, in the case of a flood risk activity, a risk specified in paragraph (6), it may serve a suspension notice on the operator.

(6) The following are risks specified for the purposes of paragraph (5)—

- (a) risk of flooding;
- (b) risk of detrimental impact on drainage;
- (c) risk of harm to the environment.

(7) A suspension notice served for the purpose of paragraph (2) or (5) must—

- (a) specify—
 - (i) the risk mentioned in paragraph (2) or (5),
 - (ii) the steps that must be taken to remove that risk,
 - (iii) in a case where paragraph (5) applies, the matters constituting the contravention mentioned in that paragraph,
 - (iv) in a case where paragraph (5) applies, the steps that must be taken to remedy that contravention, and
 - (v) the period within which the steps mentioned in paragraph (ii) or (iv) must be taken,
- (b) state that the environmental permit ceases to have effect to the extent specified in the notice until the notice is withdrawn, and
- (c) if the environmental permit continues to authorise the operation of a regulated facility, state any steps (in addition to those already required to be taken by the environmental permit conditions) that are to be taken when operating that regulated facility.

(8) The regulator may suspend an environmental permit under regulation 66(5) by serving a suspension notice on the operator.

(9) A suspension notice served for the purpose of paragraph (8) must—

- (a) specify the reason for the suspension,
- (b) state the sum payable by the operator and the period within which it is to be paid, and
- (c) state that the environmental permit ceases to have effect to the extent specified in the notice until the notice is withdrawn.

(10) If a suspension notice is served, the environmental permit ceases to have effect to the extent stated in the notice.

(11) Where a suspension notice has the effect of preventing waste of a specified description being accepted at a regulated facility, the notice may require the operator of that facility to display appropriate signs at such places as may be specified in the notice, informing the public that no further waste of a specified description may be accepted at that facility.

(12) The regulator—

- (a) may withdraw a suspension notice at any time by further notice served on the operator, and
- (b) must withdraw a notice when satisfied that the steps specified in it have been taken.

Offences

38.—(1) It is an offence for a person to—

- (a) contravene regulation 12(1), or
- (b) knowingly cause or knowingly permit the contravention of regulation 12(1)(a).

(2) It is an offence for a person to fail to comply with or to contravene an environmental permit condition.

(3) It is an offence for a person to fail to comply with the requirements of an enforcement notice or of a prohibition notice, suspension notice, landfill closure notice, mining waste facility closure notice, flood risk activity emergency works notice or flood risk activity remediation notice.

(4) It is an offence for a person—

- (a) to fail to comply with a notice under regulation 61(1) requiring the provision of information, without reasonable excuse;
- (b) to make a statement which the person knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made—
 - (i) in purported compliance with a requirement to provide information imposed by or under a provision of these Regulations,
 - (ii) for the purpose of obtaining the grant of an environmental permit to any person, or the variation, transfer in whole or in part, or surrender in whole or in part of an environmental permit, or
 - (iii) for the purpose of obtaining, renewing or amending the registration of an exempt facility;
- (c) intentionally to make a false entry in a record required to be kept under an environmental permit condition;
- (d) with intent to deceive—
 - (i) to forge or use a document issued or authorised to be issued or required for any purpose under an environmental permit condition, or
 - (ii) to make or have in the person's possession a document so closely resembling such a document as to be likely to deceive.

(5) It is an offence for an establishment or undertaking to—

- (a) fail to comply with paragraph 17(3) or (4) of Schedule 2, or
- (b) intentionally make a false entry in a record required to be kept under that paragraph.

(6) If an offence committed by a person under this regulation is due to the act or default of some other person, that other person is also guilty of the offence and liable to be proceeded against and punished accordingly, whether or not proceedings for the offence are taken against the first-mentioned person.

Penalties and enforcement undertakings

39.—(1) Subject to paragraph (2), a person guilty of an offence under regulation 38(1), (2) or (3) is liable—

- (a) on summary conviction to a fine or imprisonment for a term not exceeding 12 months, or to both;
- (b) on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years, or to both.

(2) A person guilty of offence under regulation 38(1), (2) or (3) in respect of a flood risk activity is liable—

- (a) on summary conviction to a fine or imprisonment for a term not exceeding 12 months, or to both;
- (b) on conviction on indictment to a fine or imprisonment for a term not exceeding 2 years, or both.

(3) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003(1), paragraphs (1)(a) and (2)(a) have effect as if for “12 months” there were substituted “6 months”.

(4) A person guilty of an offence under regulation 38(4) is liable—

- (a) on summary conviction to a fine;
- (b) on conviction on indictment to a fine or imprisonment for a term not exceeding 2 years, or to both.

(5) An establishment or undertaking guilty of an offence under regulation 38(5) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(6) Schedule 26 (enforcement undertakings) has effect.

Defences

40.—(1) It is a defence for a person charged with an offence under regulation 38(1), (2) or (3) to prove that the acts alleged to constitute the contravention were done in an emergency in order to avoid danger to human health in a case where—

- (a) the person took all such steps as were reasonably practicable in the circumstances for minimising pollution, and
- (b) particulars of the acts were furnished to the regulator as soon as reasonably practicable after they were done.

(2) A person who knowingly permits a water discharge activity or groundwater activity where the discharge is water from an abandoned mine or an abandoned part of a mine is not guilty of an offence under regulation 38(1) unless—

- (a) the person is the owner or former operator of the mine or that part of it, and
- (b) the mine or the part of the mine was abandoned after 31st December 1999.

(3) In paragraph (2), “abandoned”, in relation to a mine, and “mine” have the meaning given in section 91A of the 1991 Act(2).

(1) 2003 c. 44. The power to create penalties in section 2 of, and paragraph 25 of Schedule 1 to, the Pollution Prevention and Control Act 1999 (c. 24) is modified pending the commencement of section 154(1) of the Criminal Justice Act 2003 by section 105 of the Clean Neighbourhoods and Environment Act 2005 (c. 16), as amended by section 88(1) of the Climate Change Act 2008 (c. 27).

(2) Section 91A was inserted by section 58 of the 1995 Act.

Offences by bodies corporate

41.—(1) If an offence committed under these Regulations by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on the part of an officer,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body.

(3) In paragraph (1), "officer", in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

Enforcement by the High Court

42. The regulator may take proceedings in the High Court for the purpose of securing compliance with an enforcement notice, suspension notice, prohibition notice, landfill closure notice, mining waste facility closure notice, flood risk activity emergency works notice or flood risk activity remediation notice (whether or not it has taken other steps for that purpose).

Admissibility of evidence

43. Where, pursuant to an environmental permit granted by a local authority, an entry is required to be made in any record as to the observance of a condition of the environmental permit and the entry has not been made, that fact is admissible as evidence that the condition has not been observed.

Power of court to order cause of offence to be remedied

44.—(1) This regulation applies where a person is convicted of an offence under regulation 38(1), (2) or (3) in respect of a matter which appears to the court to be a matter which it is in the person's power to remedy.

(2) In addition to or instead of a punishment imposed under regulation 39, the court may order the person to take such steps for remedying the matter within such period as may be specified in the order.

(3) The period may be extended, or further extended, by order of the court on an application made before the end of the period or the extended period, as the case may be.

(4) If a person is ordered to remedy a matter, that person is not liable under regulation 38 in respect of that matter during the period or the extended period.