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STATUTORY INSTRUMENTS

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**2017 No. 1200**

**The Control of Mercury (Enforcement) Regulations 2017**

**PART 1**

Introductory

**Citation and application**

1.—(1) These Regulations may be cited as the Control of Mercury (Enforcement) Regulations 2017.

(2) These Regulations apply to the regulation of activities relating to mercury in the United Kingdom including—

- (a) in the territorial sea (see regulation 3), and
- (b) in respect of offshore installations in the offshore area (see paragraphs 1 and 2 of Schedule 2).

**Commencement**

2.—(1) These Regulations (except Parts 2 and 3) come into force on 1st January 2018.

(2) Parts 2 and 3 (which are about civil enforcement except in Scotland and the Scottish offshore area) come into force on 1st April 2018.

**Interpretation**

3. In these Regulations—

“the Mercury Regulation” means Regulation EU 2017/852 of the European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008(1);

“the EA 1995” means the Environment Act 1995(2);

“the EO 2002” means the Environment (Northern Ireland) Order 2002(3);

“the TSWR 2007” means the Transfrontier Shipment of Waste Regulations 2007(4);

“the WCLO 1997” means the Waste and Contaminated Land (Northern Ireland) Order 1997(5);

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(1) OJ No L 137, 24.5.2017, p1.

(2) 1995 c.25. Relevant amending enactments are as follows. For section 41, S.I. 2017/1200. For section 108, section 55 of the Anti-social Behaviour Act 2003 (c.38), section 53 of the Clean Neighbourhoods and Environment Act 2005 (c.16), paragraph 3 of Schedule 2 to the Protection of Freedoms Act 2012 (c.9) and section 46 of the Regulatory Reform (Scotland) Act 2014 (asp 3) (“the RRSa 2014”) and S.I. 2013/755 and 2016/475. For section 110, paragraph 29 of Schedule 3 to the RRSa 2014. For Schedule 18, section 46 of the RRSa 2014.

(3) S.I. 2002/3153 (N.I. 7), amended by S.I. 2011/2911 and 2017/1200. There are other amending instruments but none is relevant.

(4) S.I. 2007/1711, amended by S.I. 2014/861. There are other amending instruments but none is relevant.

(5) S.I. 1997/2778 (N.I. 19). Relevant amending enactments are as follows. For Article 72, section 5 of, and paragraph 2 of Schedule 1 and paragraph 1 of Schedule 2 to, the Waste and Contaminated Land (Amendment) Act (Northern Ireland) 2011 (c. 5) (“the WCLA 2011”) and S.I. 2007/611 (N.I. 3). For Article 74, S.I. 2007/611. For Schedule 4, paragraph 1 of Schedule 2 to the WCLA 2011.

“the Agency” means the Environment Agency;

“civil penalty” is to be read in accordance with regulation 10(2) and (5);

“civil penalty notice” is to be read in accordance with regulation 10(2);

“DAERA” means the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;

“enforcement notice” is to be read in accordance with the following—

(a) regulation 8(2), in the case of an enforcement notice given by the Agency or NRW;

(b) regulation 20(2), in the case of an enforcement notice given by DAERA;

(c) regulation 26(2), in the case of an enforcement notice given by SEPA;

“England” includes the territorial sea which does not form part of Northern Ireland, Scotland or Wales;

“information notice” is to be read in accordance with regulation 35(2);

“Northern Ireland” includes the Northern Irish area within the meaning given by regulation 4(1) of the TSWR 2007 (which describes an area of territorial sea adjacent to Northern Ireland);

“NRW” means the Natural Resources Body for Wales;

“relevant provision” means a provision listed in Schedule 1;

“Scotland” includes the area of territorial sea falling within the Scottish area within the meaning given by regulation 4(1) of the TSWR 2007 (which describes an area of sea adjacent to Scotland);

“SEPA” means the Scottish Environment Protection Agency;

“territorial sea” means the territorial sea adjacent to the United Kingdom(6);

“Wales” includes the Welsh area within the meaning given by regulation 4(1) of the TSWR 2007 (which describes an area of territorial sea adjacent to Wales).

#### **Definitions relating to offshore installations**

4. In these Regulations, “offshore installation”, “offshore area”, “English offshore area” and “Scottish offshore area” have the meanings given by Schedule 2.

#### **“Enforcing authority”**

5. In these Regulations, “enforcing authority” means—

(a) the Agency, for England and offshore installations in the English offshore area;

(b) DAERA, for Northern Ireland;

(c) SEPA, for Scotland and offshore installations in the Scottish offshore area;

(d) NRW, for Wales.

#### **Designation of competent authority**

6. The enforcing authority is designated as the competent authority in accordance with Article 17 of the Mercury Regulation (which requires the designation of authorities responsible for performing certain functions under that Regulation).

(6) Section 1(5) of the Territorial Sea Act 1987 (c.49) has the effect that the reference to the territorial sea adjacent to the United Kingdom must be construed in accordance with that section and with any provision made, or having effect as if made, under that section. S.I. 1989/482 and 2014/1353 are relevant instruments made under that section.

## PART 2

### Civil enforcement in England and Wales

#### Application of this Part

- 7.—(1) This Part applies to civil enforcement—
- (a) in England and in respect of offshore installations in the English offshore area (see paragraphs 1 and 3 of Schedule 2), and
  - (b) in Wales.

#### Enforcement notices

8.—(1) An enforcing authority may give a person an enforcement notice if condition A or B is met.

(2) An enforcement notice is a notice requiring the person to take action (including to stop doing any thing).

(3) Condition A is that the enforcing authority is of the opinion that the person has failed or is failing to comply with a relevant provision or provisions.

(4) Condition B is that the enforcing authority is of the opinion that the person is likely to fail to comply with a relevant provision or provisions.

(5) The action which the enforcing authority may require the person to take is any one or more of the following—

- (a) action to ensure compliance with the relevant provision or provisions in question;
- (b) action to remediate any environmental damage attributable to the non-compliance in question;
- (c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.

(6) An enforcement notice must state—

- (a) the matters constituting the failure or likelihood of failure,
- (b) the action which must be taken under paragraph (5),
- (c) the period (the “compliance period”) within which the action must be taken,
- (d) that there is a right to appeal against the enforcement notice and how that right may be exercised, and
- (e) the consequences of failing to comply with the enforcement notice (see regulations 9, 10, 18 and 41 which relate to action to ensure compliance, civil penalties, civil proceedings and offences respectively).

(7) An enforcing authority may withdraw an enforcement notice given by it by informing the person to whom it was given in writing.

(8) A person to whom an enforcement notice is given may appeal to the First-tier Tribunal against it on one or more of the following grounds—

- (a) that the decision to give the enforcement notice was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the nature of what is required by the enforcement notice is unreasonable;
- (d) that the decision was unreasonable for any other reason;
- (e) any other ground.

**Action by authority to ensure compliance with enforcement notices**

**9.**—(1) This regulation applies where—

- (a) an enforcing authority has given an enforcement notice to a person, and
- (b) the enforcing authority is of the opinion that the person has not carried out one or more of the actions referred to in the enforcement notice within the compliance period (see regulation 8(6)(c)).

(2) The enforcing authority may take any of the following action (whether the same as or different to any action referred to in the enforcement notice)—

- (a) action to ensure compliance with the relevant provision or provisions in question;
- (b) action to remediate any environmental damage attributable to the non-compliance in question;
- (c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.

(3) If the enforcing authority proposes that any of the action under paragraph (2) be taken on any premises, the provisions referred to in paragraphs (4) and (5) (which relate to powers of enforcing authorities and persons authorised by them and related matters) apply but as if modified in the way shown.

(4) Where the Agency proposes to take the action, sections 108, 109 and 110 of, and Schedule 18 to, the EA 1995 (as they apply in England) apply but as if—

- (a) in section 108 there were a reference to the purpose of taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of purposes in subsection (1);
- (b) in section 108 there were a reference to taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of powers in subsection (4);
- (c) in paragraph 6(1) of Schedule 18 the reference in the words before paragraph (a) to any power conferred by section 108(4)(a) or (b) or (5) of this Act included a reference to the power conferred by virtue of sub-paragraph (b) above.

(5) Where NRW proposes to take the action, sections 108, 109 and 110 of, and Schedule 18 to, the EA 1995 (as they apply in Wales) apply but as if—

- (a) in section 108 there were a reference to the purpose of taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of purposes in subsection (1);
- (b) in section 108 there were a reference to taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of powers in subsection (4);
- (c) in paragraph 6(1) of Schedule 18 the reference in the words before paragraph (a) to any power conferred by section 108(4)(a) or (b) or (5) of this Act included a reference to the power conferred by virtue of sub-paragraph (b) above.

**Civil penalties**

**10.**—(1) An enforcing authority may give a person a civil penalty notice if condition A or B is met.

(2) A civil penalty notice is a notice requiring the person to pay a civil penalty.

(3) Condition A is that the enforcing authority is satisfied, on the balance of probabilities, that the person has failed or is failing to comply with a relevant provision.

(4) Condition B is that the enforcing authority is satisfied, on the balance of probabilities, that the person has failed or is failing to fully comply with an enforcement notice or information notice.

(5) An enforcing authority may determine the amount of civil penalty in respect of a failure but the amount must not exceed £200,000.

(6) A civil penalty notice must not be given to a person in respect of a failure—

- (a) where the enforcing authority has started criminal proceedings against the person under regulation 41 for the failure and those proceedings have not concluded, or
- (b) where the person has been convicted of an offence under regulation 41 for the failure.

(7) A civil penalty notice must state—

- (a) the matters constituting the failure,
- (b) the amount of the civil penalty,
- (c) how payment must be made,
- (d) the period (the “payment period”) within which payment must be made, which must not be less than the period of 28 days beginning with the day on which the civil penalty notice is given,
- (e) that there is a right to appeal against the civil penalty notice and how that right may be exercised,
- (f) the consequences of failing to make payment within the payment period (see regulation 41 which relates to offences and paragraph (9)).

(8) Regulation 11 sets out action which must be taken by an enforcing authority before a civil penalty notice can be given by the enforcing authority.

(9) Following the payment period, the enforcing authority may recover the civil penalty (and any interest payable under regulation 12)—

- (a) as a civil debt, or
- (b) on the order of the court, as if payable under a court order.

(10) An enforcing authority may withdraw a civil penalty notice given by it by informing the person to whom it was given in writing.

(11) A person to whom a civil penalty notice is given may appeal to the First-tier Tribunal against it on one or more of the following grounds—

- (a) that the decision to give the civil penalty notice was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the amount of the civil penalty is unreasonable;
- (d) that the decision was unreasonable for any other reason;
- (e) any other ground.

### **Further provision about civil penalties**

**11.**—(1) An enforcing authority must not give a civil penalty notice to a person unless—

- (a) the enforcing authority has given a notice (a “notice of intent”) to the person stating that it proposes to give a civil penalty notice to the person, and
- (b) the period for representations referred to in paragraph (6) has expired.

(2) A notice of intent must state—

- (a) the matters constituting the failure to comply with the relevant provision in question or the enforcement notice or information notice,

- (b) the maximum amount of the civil penalty,
  - (c) that the civil penalty will be payable within a period specified in the civil penalty notice, which must not be less than 28 days beginning with the day on which the civil penalty notice is given,
  - (d) that there is a right to make representations against the notice of intent and how that right may be exercised (see paragraphs (3) to (6)), and
  - (e) that the enforcing authority has power to vary the amount of civil penalty referred to in the notice.
- (3) A person to whom a notice of intent is given may make representations to the enforcing authority about the proposal to give a civil penalty notice to the person.
- (4) The right to make representations includes (but is not limited to) the right to make representations about the amount of civil penalty which the enforcing authority has power to determine under regulation 10(5).
- (5) The representations must be in writing.
- (6) The representations must be given to the enforcing authority within a period of 28 days beginning with the day on which the notice of intent was given.
- (7) An enforcing authority may withdraw a notice of intent by informing the person to whom it was given in writing.
- (8) An enforcing authority must pay any civil penalty and interest under regulation 12 into the Consolidated Fund.

#### **Civil penalties: late payment interest**

- 12.—(1) If a person fails to pay a civil penalty in full within the payment period (see regulation 10(7)(d)), interest is payable on the outstanding amount.
- (2) Interest falls to be paid at a rate of 8% per annum calculated on a daily basis for the period beginning with the day after the last day of the payment period and ending on the day payment is made or recovered.
- (3) The total amount of interest payable is not to exceed the civil penalty in question.

#### **Recovery of enforcement costs**

- 13.—(1) An enforcing authority may give a costs recovery notice to a person if any of conditions A to C are met.
- (2) A costs recovery notice is a notice requiring the person to pay the enforcing authority's costs.
- (3) Condition A is that the enforcing authority has given the person an enforcement notice.
- (4) Condition B is that the enforcing authority has taken action to ensure compliance with an enforcement notice under regulation 9.
- (5) Condition C is that the enforcing authority has given the person a civil penalty notice.
- (6) In paragraph (2), the reference to costs is a reference—
- (a) if condition A is met, to any costs relating to preparing and giving the enforcement notice,
  - (b) if condition B is met, to any costs relating to the action taken, and
  - (c) if condition C is met, to any costs relating to preparing and giving the civil penalty notice,
- and includes a reference to the costs of any related investigation or expert advice (including legal advice).

(7) The costs must be paid by the person within the period (the “payment period”) of 28 days beginning with the day on which the costs recovery notice is given.

(8) The costs recovery notice must state—

- (a) the amount of the costs which must be paid,
- (b) in general terms, how those costs have arisen,
- (c) the payment period,
- (d) how payment must be made,
- (e) the consequences of failing to make payment within the payment period (see paragraph (9)), and
- (f) that there is a right to appeal against the costs recovery notice and how that right may be exercised.

(9) Following the payment period, the enforcing authority may recover the costs referred to in the costs recovery notice and any related interest under regulation 14—

- (a) as a civil debt, or
- (b) on the order of the court, as if payable under a court order.

(10) An enforcing authority may withdraw a costs recovery notice given by it by informing the person to whom it was given in writing.

(11) A person to whom a costs recovery notice is given may appeal to the First-tier Tribunal against it on one or more of the following grounds—

- (a) that the decision to give the costs recovery notice was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the amount of the costs is unreasonable;
- (d) that the decision was unreasonable for any other reason;
- (e) any other ground.

#### **Enforcement costs: late payment interest**

14.—(1) If a person fails to pay the costs referred to in a costs recovery notice in full within the payment period (see regulation 13(7)), interest is payable on the outstanding amount.

(2) Interest falls to be paid at a rate of 8% per annum calculated on a daily basis for the period beginning with the day after the last day of the payment period and ending on the day payment is made or recovered.

(3) The total amount of interest payable is not to exceed the amount of costs in question.

#### **Further provision about appeals**

15.—(1) Following an appeal under regulation 8(8), 10(11) or 13(11), the First-tier Tribunal (the “Tribunal”) may—

- (a) cancel the notice;
- (b) vary the notice;
- (c) confirm the notice;
- (d) take any action which the enforcing authority is empowered to take in relation to the failure referred to in the notice;
- (e) remit any decision relating to the notice to the enforcing authority.

(2) A civil penalty notice or costs recovery notice which is the subject of an appeal is suspended pending the decision of the Tribunal.

(3) An enforcement notice which is the subject of an appeal is not suspended pending the Tribunal's decision on the appeal.

### **Multiple enforcement**

**16.**—(1) An enforcing authority may give (whether or not at the same time)—

- (a) an enforcement notice, and
- (b) a civil penalty notice,

to the same person in respect of the same failure to comply with a relevant provision.

(2) An enforcing authority must not (except in the circumstances described in paragraph (3)) give a civil penalty notice under regulation 10(3) to the same person more than once for the same failure.

(3) If a civil penalty notice is given to a person under regulation 10(3) but subsequently withdrawn, the enforcing authority may give a further civil penalty notice to the person for the failure described in the original notice.

(4) An enforcing authority must not (except in the circumstances described in paragraph (5)) give a civil penalty notice under regulation 10(4) to the same person more than once for the same failure.

(5) If a civil penalty notice is given to a person under regulation 10(4) but subsequently withdrawn, the enforcing authority may give a further civil penalty notice to the person for the failure described in the original notice.

### **Publication of civil enforcement**

**17.**—(1) Each enforcing authority must from time to time publish reports about cases in which civil penalty notices have been given.

(2) A report must, for each civil penalty notice which has been given, state—

- (a) the person to whom the notice was given,
- (b) the nature of the breach, and
- (c) the amount of the penalty.

(3) An enforcing authority must not publish information under this regulation about a civil penalty notice unless the appeal period referred to in the civil penalty notice has ended.

(4) An enforcing authority must not publish information under this regulation about a civil penalty notice which is the subject of an appeal under regulation 8(8), 10(11) or 13(11) before the appeal is decided.

(5) An enforcing authority must not publish information under this regulation about a civil penalty notice which has been withdrawn or cancelled.

### **Civil proceedings**

**18.**—(1) An enforcing authority may (subject to paragraph (5)) start proceedings in the County Court or the High Court to secure a remedy against a person if any of conditions A to C are met.

(2) Condition A is that the enforcing authority is of the opinion that the person has failed or is failing to comply with a relevant provision or provisions.

(3) Condition B is that the enforcing authority is of the opinion that the person is likely to fail to comply with a relevant provision or provisions.



(4) Condition C is that the enforcing authority is of the opinion that the person has failed to comply with all or part of an enforcement notice.

(5) Before starting proceedings under this regulation the enforcing authority must be of the opinion that any other remedy under these Regulations would be ineffectual.

## PART 3

### Enforcement specific to Northern Ireland

#### Application of this Part and interpretation

**19.**—(1) This Part applies to enforcement by DAERA in Northern Ireland.

(2) In this Part, “appeals commission” means the planning appeals commission which continues to be established in accordance with section 203 of the Planning Act (Northern Ireland) 2011(7).

#### Enforcement notices

**20.**—(1) DAERA may give a person an enforcement notice if condition A or B is met.

(2) An enforcement notice is a notice requiring the person to take action (including to stop doing any thing).

(3) Condition A is that DAERA is of the opinion that the person has failed or is failing to comply with a relevant provision or provisions.

(4) Condition B is that DAERA is of the opinion that the person is likely to fail to comply with a relevant provision or provisions.

(5) The action which DAERA may require the person to take is any one or more of the following—

- (a) action to ensure compliance with the relevant provision or provisions in question;
- (b) action to remediate any environmental damage attributable to the non-compliance in question;
- (c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.

(6) An enforcement notice must state—

- (a) the matters constituting the failure or likelihood of failure,
- (b) the action which must be taken under paragraph (5),
- (c) the period (the “compliance period”) within which the action must be taken,
- (d) that there is a right to appeal against the enforcement notice and how that right may be exercised, and
- (e) the consequences of failing to comply with the enforcement notice (see regulation 21 which relates to action to ensure compliance).

(7) DAERA may withdraw an enforcement notice by informing the person to whom it was given in writing.

(8) A person to whom an enforcement notice is given may appeal to the appeals commission against it on one or more of the following grounds—

- (a) that the decision to give the enforcement notice was based on an error of fact;

- (b) that the decision was wrong in law;
- (c) that the nature of what is required by the enforcement notice is unreasonable;
- (d) that the decision was unreasonable for any other reason;
- (e) any other ground.

### **Action by DAERA to ensure compliance with enforcement notices**

**21.**—(1) This regulation applies where—

- (a) DAERA has given an enforcement notice to a person, and
- (b) DAERA is of the opinion that the person has not carried out one or more of the actions referred to in the enforcement notice within the compliance period (see regulation 20(6)(c)).

(2) DAERA may take any of the following action (whether the same as or different to any action referred to in the enforcement notice)—

- (a) action to ensure compliance with the relevant provision or provisions in question;
- (b) action to remediate any environmental damage attributable to the non-compliance in question;
- (c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.

(3) If DAERA proposes that any of the action under paragraph (2) be taken on any premises, Articles 72, 73, 73A and 74 of, and Schedule 4 to, the WCLO 1997 (which relate to powers of DAERA and persons authorised by it and related matters) apply but as if—

- (a) in Article 72 there were a reference to the purpose of taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of purposes in sub-paragraph (1);
- (b) in Article 72 there were a reference to taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of powers in sub-paragraph (2);
- (c) in paragraph 5 of Schedule 4 the reference in the words before sub-paragraph (1)(a) to any power conferred by Article 72(2)(a) or (b) or (3) included a reference to the power conferred under sub-paragraph (b) above.

### **Recovery of enforcement costs**

**22.**—(1) DAERA may give a person a costs recovery notice if condition A or B is met.

(2) A costs recovery notice is a notice requiring the person to pay DAERA's costs.

(3) Condition A is that DAERA has given the person an enforcement notice.

(4) Condition B is that DAERA has taken action to ensure compliance with an enforcement notice under regulation 21.

(5) In paragraph (2), the reference to costs is a reference—

- (a) if condition A is met, to any costs relating to preparing and giving the enforcement notice, and
- (b) if condition B is met, to any costs relating to the action taken,

and includes a reference to the costs of any related investigation or expert advice (including legal advice).

(6) The costs must be paid by the person within the period (the “payment period”)—

- (a) of 56 days beginning with the day on which the costs recovery notice is given, where the costs recovery notice has not been appealed under paragraph (10);
  - (b) of 28 days beginning with the day on which the appeal has been determined or withdrawn, where the costs recovery notice has been appealed under paragraph (10).
- (7) The costs recovery notice must state—
- (a) the amount of the costs which must be paid,
  - (b) in general terms, how those costs have arisen,
  - (c) the payment period,
  - (d) how payment must be made,
  - (e) the consequences of failing to make payment within the payment period (see paragraph (8)), and
  - (f) that there is a right to appeal against the costs recovery notice and how that right may be exercised.
- (8) Following the payment period, DAERA may recover the costs referred to in the costs recovery notice and any related interest under regulation 23 as a civil debt.
- (9) DAERA may withdraw a costs recovery notice given by it by informing the person to whom it was given in writing.
- (10) A person to whom a costs recovery notice is given may appeal to the appeals commission against it on one or more of the following grounds—
- (a) that the decision to give the costs recovery notice was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the amount of the costs is unreasonable;
  - (d) that the decision was unreasonable for any other reason;
  - (e) any other ground.

### **Late payment interest**

**23.—**(1) If a person fails to pay the costs referred to in a costs recovery notice in full within the payment period, interest is payable on the outstanding amount.

(2) Interest falls to be paid at a rate of 8% per annum calculated on a daily basis for the period beginning with the day after the last day of the payment period and ending on the day payment is made or recovered.

(3) The total amount of interest payable is not to exceed the amount of costs in question.

### **Further provision about appeals**

**24.—**(1) A person (the “appellant”) who wishes to appeal to the appeals commission under regulation 20(8) or 22(10) must—

- (a) give the appeals commission written notice of the appeal (the “notice of appeal”),
- (b) pay the relevant fee (see paragraph (4)), and
- (c) as soon as is reasonably practicable, give DAERA a copy of the notice of appeal.

(2) A notice of appeal must include a statement of the grounds of the appeal.

(3) A notice of appeal must be given before the expiry of the period of 28 days beginning with the day on which the enforcement notice was given.

(4) The relevant fee is the amount specified in regulation 9(1) of the Planning Fees (Deemed Planning Applications and Appeals) Regulations (Northern Ireland) 2015<sup>(8)</sup>.

(5) The appeals commission may determine that an appeal is to be determined solely by reference to written representations.

(6) The appellant and DAERA may make written representations to the appeals commission about its determination under paragraph (5).

(7) The appeals Commission must take any such representations into account in its determination under paragraph (5).

(8) A costs recovery notice which is the subject of an appeal is suspended pending the appeals commission's decision on the appeal.

(9) An enforcement notice which is the subject of an appeal is not suspended pending the appeals commission's decision on the appeal.

(10) The appellant may withdraw a notice of appeal by—

- (a) giving written notice to the appeals commission stating that the appeal is withdrawn, and
- (b) as soon as is reasonably practicable, notifying DAERA.

(11) The appeals commission may (in addition to its power to confirm, reverse or vary a determination under section 204 of the Planning Act (Northern Ireland) 2011)—

- (a) take any action DAERA is empowered to take in relation to the failure referred to in the notice;
- (b) remit any decision relating to the notice to DAERA.

(12) A determination of the appeals commission is final.

## PART 4

### Enforcement specific to Scotland

#### Application of this Part

**25.** This Part applies to enforcement—

- (a) in Scotland, and
- (b) in respect of offshore installations in the Scottish offshore area (see paragraphs 1 and 4 of Schedule 2).

#### Enforcement notices

**26.—**(1) SEPA may give a person an enforcement notice if condition A or B is met.

(2) An enforcement notice is a notice requiring the person to take action (including to stop doing any thing).

(3) Condition A is that SEPA is of the opinion that the person has failed or is failing to comply with the relevant provision or provisions.

(4) Condition B is that SEPA is of the opinion that the person is likely to fail to comply with the relevant provision or provisions.

(5) The action which SEPA may require the person to take is any one or more of the following—

- (a) action to ensure compliance with the relevant provision or provisions in question;

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<sup>(8)</sup> S.R. (N.I) 2015/136.

- (b) action to remediate any environmental damage attributable to the non-compliance in question;
  - (c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.
- (6) An enforcement notice must state—
- (a) the matters constituting the failure or likelihood of failure,
  - (b) the action which must be taken under paragraph (5),
  - (c) the period (the “compliance period”) within which the action must be taken,
  - (d) that there is a right to appeal against the enforcement notice and how that right may be exercised, and
  - (e) the consequences of failing to comply with the enforcement notice (see regulations 27, 31, 32 and 41 which relate to action to ensure compliance, court proceedings, monetary penalties and offences respectively).
- (7) SEPA may withdraw an enforcement notice by informing the person to whom it was given in writing.
- (8) A person to whom an enforcement notice is given may appeal to the Scottish Ministers against it on one or more of the following grounds—
- (a) that the decision to give the enforcement notice was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the nature of what is required by the enforcement notice is unreasonable;
  - (d) that the decision was unreasonable for any other reason;
  - (e) any other ground.

### **Action by SEPA to ensure compliance with enforcement notices**

- 27.—(1) This regulation applies where—
- (a) SEPA has given an enforcement notice to a person, and
  - (b) SEPA is of the opinion that the person has not carried out one or more of the actions referred to in the enforcement notice within the compliance period (see regulation 26(6)(c)).
- (2) SEPA may take any of the following action (whether the same as or different to any action referred to in the enforcement notice)—
- (a) action to ensure compliance with the relevant provision or provisions in question;
  - (b) action to remediate any environmental damage attributable to the non-compliance in question;
  - (c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.
- (3) If SEPA proposes that any of the action under paragraph (2) be taken on any premises, sections 108, 108A, 109 and 110 of, and Schedule 18 to, the EA 1995 (as they apply in Scotland) apply but as if—
- (a) in section 108 there were a reference to the purpose of taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of purposes in subsection (1);
  - (b) in section 108 there were a reference to taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of powers in subsection (4);

- (c) in paragraph 6(1) of Schedule 18 the reference in the words before paragraph (a) to any power conferred by section 108(4)(a) or (b) or (5) of this Act included a reference to the power conferred by virtue of sub-paragraph (b) above.

### **Recovery of enforcement costs**

- 28.**—(1) SEPA may give a person a costs recovery notice if condition A or B is met.
- (2) A costs recovery notice is a notice requiring the person to pay SEPA’s costs.
- (3) Condition A is that the SEPA has given the person an enforcement notice.
- (4) Condition B is that SEPA has taken action to ensure compliance with an enforcement notice under regulation 27.
- (5) In paragraph (2), the reference to costs is a reference—
- (a) if condition A is met, to any costs relating to preparing and giving the enforcement notice, and
  - (b) if condition B is met, to any costs relating to the action taken,
- and includes a reference to the costs of any related investigation or expert advice (including legal advice).
- (6) The costs must be paid by the person within the period (the “payment period”)—
- (a) of 56 days beginning with the day on which the costs recovery notice is given, where the costs recovery notice has not been appealed under paragraph (11);
  - (b) of 28 days beginning with the day on which the appeal has been determined or withdrawn, where the costs recovery notice has been appealed under paragraph (11);
  - (c) of so many days as the Scottish Ministers may specify, where the costs recovery notice has been appealed under paragraph (11) and the Scottish Ministers have so specified.
- (7) The costs recovery notice must state—
- (a) the amount of the costs which must be paid,
  - (b) in general terms, how those costs have arisen,
  - (c) the payment period,
  - (d) how payment must be made,
  - (e) the consequences of failing to make payment within the payment period (see paragraph (9)), and
  - (f) that there is a right to appeal against the costs recovery notice and how that right may be exercised.
- (8) Following the payment period, SEPA may recover the costs referred to in the costs recovery notice and any related interest under regulation 29 as a civil debt.
- (9) The costs are recoverable as if they were payable under an extract registered decree arbitral bearing a warrant for execution issued by a sheriff of any sheriffdom.
- (10) SEPA may withdraw a costs recovery notice given by it by informing the person to whom it was given in writing.
- (11) A person to whom a costs recovery notice is given may appeal to the Scottish Ministers against it on one or more of the following grounds—
- (a) that the decision to give the costs recovery notice was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that some or all of the costs were not incurred or were unnecessarily incurred;

- (d) any other ground.

### **Late payment interest**

**29.**—(1) If a person fails to pay the costs referred to in a costs recovery notice in full within the payment period, interest is payable on the outstanding amount.

(2) Interest falls to be paid at a rate of 8% per annum calculated on a daily basis for the period beginning with the day after the last day of the payment period and ending on the day payment is made or recovered.

- (3) The total amount of interest payable is not to exceed the amount of costs in question.

### **Further provision about appeals**

**30.**—(1) Following an appeal under regulation 26(8) or 28(11), the Scottish Ministers may—

- (a) cancel the notice;
- (b) vary the notice;
- (c) confirm the notice;
- (d) take any action which SEPA is empowered to take in relation to the failure referred to in the notice;
- (e) remit any decision relating to the notice to SEPA.

(2) A determination of an appeal by the Scottish Ministers is final.

(3) The Scottish Ministers may—

- (a) appoint a person to exercise any function under this regulation on the Scottish Ministers' behalf, or
- (b) refer a matter relating to the exercise of any function under this regulation to a person the Scottish Ministers may appoint for that purpose.

(4) An enforcement notice which is the subject of an appeal is not suspended pending the Scottish Minister's decision on the appeal.

(5) A costs recovery notice which is the subject of an appeal is suspended pending the decision of the Scottish Ministers.

- (6) Schedule 3 sets out further provision about appeals to the Scottish Ministers.

### **Enforcement by the courts**

**31.**—(1) SEPA may start proceedings in a court of competent jurisdiction to secure a remedy against a person if any of the conditions A to C are met.

(2) Condition A is that SEPA is of the opinion that the person has failed or is failing to comply with a relevant provision or provisions.

(3) Condition B is that SEPA is of the opinion that the person is likely to fail to comply with a relevant provision or provisions.

(4) Condition C is that SEPA is of the opinion that the person has failed or is failing to comply with all or part of an enforcement notice.

**Monetary penalties, costs recovery and enforcement undertakings**

**32.**—(1) The Environmental Regulation (Enforcement Measures) (Scotland) Order 2015<sup>(9)</sup> is amended as follows.

(2) At the end of the table in Schedule 4 (which relates to relevant offences and fixed penalty amounts) insert—

“The Control of Mercury (Enforcement) Regulations 2017				
Regulation 41(1) (non-compliance with a relevant provision)	YES	YES	YES	MEDIUM
Regulation 41(2) (non-compliance with an enforcement notice)	YES	YES	YES	MEDIUM
Regulation 41(3) (non-compliance with an information notice)	YES	YES	YES	LOW
Regulation 41(4) (giving information which is false or misleading)	YES	NO	NO	HIGH
Regulation 41(5) (failing to produce a document or record)	YES	NO	NO	LOW”

**PART 5****Further provision about enforcement****Imports and exports: assistance by customs officials**

**33.**—(1) A customs official may assist an enforcing authority by seizing and detaining any material if the condition in paragraph (2) is met.

(2) The condition is that the customs official has reasonable grounds to suspect the material is being exported or imported in breach of any one or more of the following provisions of the Mercury Regulation—

- (a) Article 3(1) (which prohibits the export of mercury);
- (b) Article 3(2) (which prohibits the export of listed mercury compounds);
- (c) Article 3(4) (which prohibits the export of mercury compounds not listed under Article 3(2) for the purposes of reclaiming mercury);
- (d) Article 4(1) (which prohibits the import of mercury and listed mixtures of mercury, including mercury waste, other than for disposal as waste where the exporting country has no conversion capacity);
- (e) Article 4(2) (which prohibits the import of other mixtures of mercury and mercury compounds for purposes of reclaiming mercury);
- (f) Article 4(3) (which prohibits the import of mercury for use in artisanal and small-scale gold mining and processing);
- (g) Article 5(1) (which prohibits the export, import and manufacturing of listed mercury-added products);

(9) S.S.I. 2015/383, amended by S.S.I. 2016/161; there are other amending instruments but none is relevant.



- (h) Article 8(1) (which prohibits placing on the market new mercury-added products).
- (3) A customs official is for the purposes of this regulation a person who is—
  - (a) a general customs official designated under section 3 of the Borders, Citizenship and Immigration Act 2009<sup>(10)</sup>, or
  - (b) a customs revenue official designated under section 11 of that Act.
- (4) Anything seized and detained must—
  - (a) not be detained for longer than 5 working days, and
  - (b) be dealt with in such manner as the Secretary of State may direct.
- (5) A working day is for the purposes of paragraph (4) any day except a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971<sup>(11)</sup> in any part of the United Kingdom.

### **Information sharing**

**34.**—(1) A relevant authority may disclose information obtained by it in the course of performing a relevant function to any other person if condition A or B is met.

(2) Condition A is that the disclosure is made in circumstances where it is necessary for the other person to have the information for the purpose of performing a function of that person under any enactment.

(3) Condition B is that the disclosure is made for the purpose of facilitating the performance by the relevant authority of any relevant function.

(4) A relevant function is a function conferred on the relevant authority—

- (a) under or by virtue of these Regulations,
- (b) under section 108 of the EA 1995, or
- (c) under Article 72 of the WCLO 1997.

(5) The Welsh Ministers may disclose relevant information to any other person if the condition in paragraph (7) is met.

(6) Relevant information is information obtained by the Welsh Ministers in the course of investigating compliance with Article 10(4) of the Mercury Regulation (which relates to amalgam separators) in accordance with powers conferred under any enactment.

(7) The condition is that the disclosure is made in circumstances where it is necessary for the other person to have the information for the purpose of performing a function of that person under any enactment.

(8) Disclosure which is authorised by this regulation does not breach—

- (a) an obligation of confidence owed by the person making the disclosure, or
- (b) any other restriction on the disclosure of information (however imposed).

(9) But nothing in this regulation authorises the disclosure of information—

- (a) where doing so contravenes the Data Protection Act 1998<sup>(12)</sup>, or
- (b) where that disclosure would, in the opinion of the Secretary of State, be contrary to the interests of national security.

(10) This regulation does not limit the circumstances in which information may be disclosed apart from this regulation.

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<sup>(10)</sup> 2009 c.11.

<sup>(11)</sup> 1971 c.80, amended by section 1 of the St Andrew's Day Bank Holiday (Scotland) Act 2007 (asp 2).

<sup>(12)</sup> 1998 c.29.

(11) A person to whom information is disclosed under this regulation may disclose that information onward to any other person, subject to paragraph (12).

(12) Paragraphs (1) to (4) and (8) to (10) apply in respect of the onward disclosure but as if—

- (a) references to a relevant authority were to the person proposing the onward disclosure;
- (b) the requirement under paragraph (1) that the information be obtained in the course of performing a relevant function were met.

(13) In paragraph (4), the reference to a function conferred under section 108 of the EA 1995 or Article 72 of the WCLO 1997 is a reference to the function only in so far as the function is performed in connection with these Regulations.

(14) In this regulation—

“enactment” includes—

- (a) an enactment comprised in, or in an instrument made under, an Act of the Parliament of Northern Ireland,
- (b) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
- (c) an enactment comprised in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;

“relevant authority” means—

- (a) a customs official (within the meaning of regulation 33(3)),
- (b) an enforcing authority, or
- (c) the Secretary of State.

### **Information notices**

**35.**—(1) An enforcing authority may give a person an information notice if the condition in paragraph (3) is met.

(2) An information notice is a notice requiring the person to give information specified in the notice to the enforcing authority.

(3) The condition is that the enforcing authority is of the opinion that it requires the information to perform any one or more of the functions conferred on it under or by virtue of these Regulations.

(4) An information notice must state—

- (a) the information which is required by the enforcing authority,
- (b) the period within which the information must be given to the enforcing authority, and
- (c) the consequences of failing to comply with the information notice.

(5) An enforcing authority may require information to be given in a particular form (for example in an electronic form) by stating this and describing the form in the information notice.

(6) An enforcing authority may withdraw an information notice given by it by informing the person to whom it was given in writing.

### **Further provision about giving notices**

**36.**—(1) This regulation applies to the giving of notices under regulations 8 to 13, 20, 22, 26, 28 and 35.

(2) A notice takes effect when given.

(3) A notice may be given to a person by—

- (a) handing it to the person,
  - (b) leaving it at the person's proper address,
  - (c) sending it by post to the person at that address, or
  - (d) sending it to the person by electronic means (see paragraph (9) which sets out the circumstances in which a notice may be sent by electronic means).
- (4) A notice to a body corporate may be given to the secretary or clerk of that body.
- (5) A notice to a partnership may be given to a partner or a person who has the control or management of the partnership business.
- (6) For the purposes of this regulation and of section 7 of the Interpretation Act 1978(13) (which relates to service of documents by post) in its application to the section, the proper address of a person is—
- (a) in the case of a body corporate or its secretary or clerk, the address of the body's registered or principal office;
  - (b) in the case of a partnership, a partner or person having the control or management of the partnership business, the address of the principal office of the partnership;
  - (c) in any other case, the person's last known address.
- (7) For the purposes of paragraph (6) the principal office of a company registered outside the United Kingdom, or of a partnership carrying on business outside the United Kingdom, is its principal office within the United Kingdom.
- (8) If a person has specified an address in the United Kingdom, other than the person's proper address within the meaning of paragraph (6), as the one at which the person or someone on the person's behalf will accept notices of the same description as a notice under regulation 8, 10, 11, 13, 20, 22, 26, 28 or 35 (as the case may be), that address is also treated for the purposes of this regulation and section 7 of the Interpretation Act 1978 as the person's proper address.
- (9) A notice may be sent to a person by electronic means only if—
- (a) the person has indicated that notices of the same description as a notice under regulation 8, 10, 11, 13, 20, 22, 26, 28 or 35 (as the case may be) may be given to the person by being sent to an electronic address and in an electronic form specified for that purpose, and
  - (b) the notice is sent to that address in that form.
- (10) A notice sent to a person by electronic means is, unless the contrary is proved, to be treated as having been given at 9 am on the working day (within the meaning given by regulation 33(5)) immediately following the day on which it was sent.
- (11) In this regulation, "electronic address" means any number or address used for the purposes of sending or receiving documents or information by electronic means.

### **Authorising imports**

37.—(1) A person (the "applicant") may make an application to an enforcing authority for authorisation to import mercury or a mixture of mercury listed in Annex I of the Mercury Regulation in accordance with the second subparagraph of Article 4(1) of that Regulation.

- (2) An application must—
  - (a) be in writing in such form as the enforcing authority may determine (for example in an electronic form);

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(13) 1978 c.30.

- (b) contain such information as the enforcing authority may require;
  - (c) in respect of an application to the Agency, NRW or SEPA, be accompanied by any charge which it may require pursuant to section 41(1)(k) of the EA 1995;
  - (d) in respect of an application to DAERA, be accompanied by any charge which DAERA may require pursuant to paragraph 9C of Schedule 1 to the EO 2002.
- (3) After receiving an application the enforcing authority must either—
- (a) grant the authorisation (subject to conditions if appropriate), or
  - (b) refuse to grant the authorisation.
- (4) If an enforcing authority requires the applicant to give further information before reaching its decision, the enforcing authority may write to the applicant stating that it requires that information before any decision is reached.
- (5) If an enforcing authority requests further information under paragraph (4), the duty to determine the application under paragraph (3) does not apply until the authority has received the information.
- (6) The enforcing authority must inform the applicant in writing of—
- (a) its decision under paragraph (3), and
  - (b) where the decision is to refuse to grant the authorisation, the reasons for the refusal.

#### **Notification of new mercury-added products and manufacturing processes**

**38.**—(1) The enforcing authority must perform the functions of the United Kingdom under Article 8(4) of the Mercury Regulation (which refers to assessing and forwarding notifications under Article 8(3) of that Regulation if certain criteria are fulfilled).

(2) A notification to the Agency, NRW or SEPA pursuant to paragraph (1) must be accompanied by any charge which it may require pursuant to section 41(1)(k) of the EA 1995.

(3) A notification to DAERA pursuant to paragraph (1) must be accompanied by any charge which DAERA may require pursuant to paragraph 9C of Schedule 1 to the EO 2002.

## **PART 6**

### **Offshore installations: assistance by Secretary of State**

#### **Offshore installations: assistance by Secretary of State**

**39.**—(1) The Secretary of State may assist an enforcing authority performing functions conferred on the authority under these Regulations in respect of an offshore installation situated in any one or more of the following areas—

- (a) the territorial sea (see regulation 3);
  - (b) the English offshore area (see paragraphs 1 and 3 of Schedule 2);
  - (c) the Scottish offshore area (see paragraphs 1 and 4 of Schedule 2).
- (2) The power to assist includes (but is not limited to) power to do either or both of the following—
- (a) inspect the offshore installation;
  - (b) provide the enforcing authority with information about the offshore installation.
- (3) For those purposes the Secretary of State may appoint in writing a person (an “appointed person”) to exercise the powers set out in paragraph (4).

- (4) The powers are—
- (a) to board the offshore installation at any reasonable time;
  - (b) to be accompanied by any other person authorised by the Secretary of State;
  - (c) to take any equipment or materials which might be required;
  - (d) to investigate any matter and examine any thing;
  - (e) to direct that any part of the offshore installation be left undisturbed (whether generally or in particular respects);
  - (f) to take measurements or photographs or make recordings;
  - (g) to take samples of any thing found on the offshore installation or in the atmosphere or any land, seabed (including its subsoil) or water in the vicinity of the offshore installation;
  - (h) to require a person who the appointed person believes is able to give information which is relevant—
    - (i) to attend at a place and time specified by the appointed person,
    - (ii) to answer questions, and
    - (iii) to sign a declaration of truth of that person’s answers;
  - (i) to require the production of any document or record or extract of one and, if required—
    - (i) make a copy of it;
    - (ii) take possession of it for so long as is necessary in the opinion of the appointed person (paragraph (6) contains further provision about this);
  - (j) to require a person to provide facilities and assistance in relation to—
    - (i) any matters or things within that person’s control, or
    - (ii) which that person has responsibilities.
- (5) An appointed person must show the person’s written appointment to another person if—
- (a) the appointed person is proposing to exercise or is exercising a power under paragraph (4), and
  - (b) the other person asks to see it.
- (6) An appointed person must not under paragraph (4)(i)(ii)—
- (a) take possession of a document or record (other than to make a copy) if making a copy would be enough;
  - (b) remove a document or record from any place which is required by law to be kept at the place.
- (7) An appointment (or authorisation) under any of the following is treated as an appointment for the purposes of paragraph (3), unless the Secretary of State specifies to the contrary—
- (a) regulation 16 of the Offshore Chemicals Regulations 2002(14);
  - (b) regulation 12 of the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005(15);
  - (c) regulation 50B of the Transfrontier Shipment of Waste Regulations 2007(16).

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(14) S.I. 2002/1355, to which there are amendments not relevant to these Regulations.

(15) S.I. 2005/2055, to which there are amendments not relevant to these Regulations.

(16) S.I. 2007/1711, amended by S.I. 2014/861; there are other amending instruments but none is relevant.

**Admissibility etc.**

**40.**—(1) An answer given by a person in response to a requirement under regulation 39(4)(h) may be used in evidence against the person, subject to paragraphs (2) to (4).

(2) In criminal proceedings against the person—

- (a) no evidence relating to the answer may be adduced by or on behalf of the prosecution, and
- (b) no question relating to it may be asked by or on behalf of the prosecution.

(3) Paragraph (2) does not apply if the proceedings are for an offence under—

- (a) regulation 44(3),
- (b) section 5 of the Perjury Act 1911 (false statutory declarations and other false statements without oath)(**17**),
- (c) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations not on oath)(**18**), or
- (d) Article 10 of the Perjury (Northern Ireland) Order 1979 (false statutory declarations and other false unsworn statements)(**19**).

(4) Paragraph (2) does not apply if, in the proceedings—

- (a) evidence relating to the answer is adduced by or on behalf of the person who gave it, or
- (b) a question relating to it is asked by or on behalf of that person.

(5) Nothing in this Part is to be taken in England and Wales or Northern Ireland to confer power to compel the production by any person of a document or information in respect of a claim to legal professional privilege.

(6) Nothing in this Part is to be taken in Scotland to confer power to compel the production by any person of a document or information in respect of a claim to confidentiality of communications.

## PART 7

### Criminal enforcement

**Offences in respect of laws relating to mercury, enforcement notices and information**

**41.**—(1) A person commits an offence if the person fails to comply with a relevant provision.

(2) A person commits an offence if the person fails to comply with an enforcement notice.

(3) A person commits an offence if the person fails to comply with an information notice.

(4) A person commits an offence if the person gives an enforcing authority information which—

- (a) the person knows is false or misleading, and
- (b) is given in connection with the performance of any function conferred on the enforcing authority under or by virtue of these Regulations.

(5) A person commits an offence if the person fails to produce a document or record for an enforcing authority performing a function pursuant to regulation 6.

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(17) 1911 c.6.

(18) 1995 c.39.

(19) S.I. 1979/1714 (N.I. 19).

### **Limitation of regulation 41 offences in England and Wales only**

**42.**—(1) Proceedings against a person for an offence under regulation 41(1) must not be started if—

- (a) a civil penalty notice has been given to the person under regulation 10(3) for the failure, and
- (b) the civil penalty notice has not been withdrawn.

(2) Proceedings against a person for an offence under regulation 41(2) or (3) must not be started if—

- (a) a civil penalty notice has been given to the person under regulation 10(4) for the failure, and
- (b) the civil penalty notice has not been withdrawn.

(3) Proceedings against a person for an offence under regulation 41(1) or (2) must not be started if civil proceedings have been started against the person under regulation 18 in respect of the failure.

### **Offences relating to customs officials**

**43.**—(1) A person commits an offence if the person intentionally obstructs a customs official performing a function under regulation 33(1).

(2) A person commits an offence if the person fails, without reasonable excuse, to give a customs official performing a function under regulation 33(1) information which the customs official requires.

(3) A person commits an offence if the person gives a customs official performing a function under regulation 33(1) information knowing it to be false or misleading.

(4) A person commits an offence if the person fails to produce a document or record for a customs official performing a function under regulation 33(1) when required to do so.

### **Offences relating to inspections of offshore installations**

**44.**—(1) A person commits an offence if the person intentionally obstructs an appointed person performing a function under regulation 39.

(2) A person commits an offence if the person fails, without reasonable excuse, to give an appointed person performing a function under regulation 39 information which the appointed person requires.

(3) A person commits an offence if the person gives an appointed person performing a function under regulation 39 information knowing it to be false or misleading.

(4) A person commits an offence if the person fails to produce a document or record for an appointed person performing a function under regulation 39 when required to do so.

### **Proceedings: partnerships etc.**

**45.**—(1) Proceedings for an offence under this Part alleged to have been committed by a partnership must be started in the name of the partnership (and not in that of any of its members).

(2) Proceedings for an offence under this Part alleged to have been committed by an unincorporated association must be started in the name of the association (and not in that of any of its members).

(3) A fine imposed on a partnership (other than a Scottish partnership) on its conviction of an offence is to be paid out of the funds of the partnership.

(4) A fine imposed on an unincorporated association on its conviction of an offence is to be paid out of the funds of the association.

(5) Rules of court relating to the service of documents have effect as if a partnership or unincorporated association were a body corporate.

(6) In proceedings for an offence under this Part started against a partnership or an unincorporated association in England and Wales, section 33 of the Criminal Justice Act 1925<sup>(20)</sup> and Schedule 3 to the Magistrates' Courts Act 1980<sup>(21)</sup> apply as they do in relation to a body corporate.

(7) In proceedings for an offence under this Part started against a partnership or an unincorporated association in Northern Ireland, section 18 of the Criminal Justice (Northern Ireland) Act 1945<sup>(22)</sup> and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981<sup>(23)</sup> apply as they do in relation to a body corporate.

### **Offences by bodies corporate etc.**

**46.**—(1) If an offence under this Part committed by a body corporate is shown to be one or both of the following—

- (a) to have been committed with the consent or the connivance of an officer of the body corporate;
- (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 is 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 their functions of management as if the member was a director of the body.

(3) If an offence under this Part committed by a partnership is shown to be one or both of the following—

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

that officer (as well as the partnership) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(4) If an offence under this Part committed by an unincorporated association (other than a partnership) is shown to be one or both of the following—

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

that officer (as well as the association) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(5) “Officer” means—

- (a) in relation to a body corporate—
  - (i) a director, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity, or

<sup>(20)</sup> 1925 c.86. Relevant amending enactments are Schedule 6 to the Magistrates' Court Act 1952 (c.55) and paragraph 19 of Schedule 8 to the Courts Act 1971 (c.23).

<sup>(21)</sup> 1980 c.43. Relevant amending enactments are sections 25 and 101 of, and Schedule 13 to, the Criminal Justice Act 1991 and paragraph 51 of Schedule 3 to, and Schedule 37 to, the Criminal Justice Act 2003 (c.44).

<sup>(22)</sup> 1945 c.15 (N.I. 1). Relevant amending enactments are paragraph 1 of Schedule 12 to the Justice (Northern Ireland) Act 2002 (c.26) and S.I. 1972/538 (N.I. 1).

<sup>(23)</sup> S.I. 1981/1675 (N.I. 26).



- (ii) an individual who is a controller of the body, or a person purporting to act as a controller;
- (b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such a capacity;
- (c) in relation to a partnership, means a partner, and any manager, secretary or similar officer of the partnership, or a person purporting to act in such a capacity.

### **Offences: penalties**

- 47.** A person who commits an offence under this Part is liable—
- (a) on summary conviction in England and Wales, to a fine or to imprisonment for a term not exceeding three months or to both;
  - (b) on summary conviction in Northern Ireland, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both;
  - (c) on summary conviction in Scotland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both;
  - (d) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

## **PART 8**

### **Amendments and revocation**

#### **Amendment to section 41 of the Environment Act 1995**

**48.** In section 41(1) of the EA 1995(24) (which confers power to make schemes imposing charges), after paragraph (h) insert—

- “(k) as a means of recovering costs incurred by it in performing functions conferred by Regulation EU 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008(25), the Agency, the Natural Resources Body for Wales or SEPA may require the payment to it of such charges as may from time to time be prescribed;”.

#### **Amendment to the Control of Major Accident Hazards Regulations 2015**

**49.** In regulation 3 of the Control of Major Accident Hazards Regulations 2015(26) (which relates to the application of those regulations), omit paragraph (2)(g)(ii).

#### **Amendment to the Environment (Northern Ireland) Order 2002**

**50.** In Schedule 1 to the EO 2002 (which lists purposes for which regulations may be made under Article 4 to that Order), after paragraph 9B insert—

- “**9C.** Without prejudice to paragraph 9, authorising the Department to make schemes for the charging by enforcing authorities of fees or other charges as a means of recovering costs incurred by them in performing functions conferred by Regulation EU 2017/852 of

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(24) 1995 c.25. Relevant amending enactments are paragraph 39 of Schedule 4 to the Flood and Water Management Act 2010 (c.29) and S.I. 2007/1711, 2007/3106, 2008/3087, 2009/890, 2011/2911, 2012/2788, 2013/755 and 2013/1821.

(25) OJ No L 137, 24.5.2017, p1.

(26) S.I. 2015/483, to which there are amendments not relevant to these Regulations.

the European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008.”.

**Revocation of the Mercury Export and Data (Enforcement) Regulations 2010**

**51.** The Mercury Export and Data (Enforcement) Regulations 2010(27) are revoked.

4th December 2017

*Thérèse Coffey*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs