

---

STATUTORY RULES OF NORTHERN IRELAND

---

**2003 No. 46**

**The Pollution Prevention and Control  
Regulations (Northern Ireland) 2003**

**PART 1**

**GENERAL**

**Citation and commencement**

1. These Regulations may be cited as the Pollution Prevention and Control Regulations (Northern Ireland) 2003 and shall come into operation on 31 March 2003.

**Interpretation: general**

2.—(1) The Interpretation Act (Northern Ireland)(1) 1954 shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) In these Regulations, except in so far as the context otherwise requires—

“change in operation” means, in relation to an installation or mobile plant, a change in the nature or functioning or an extension of the installation or mobile plant which may have consequences for the environment; and “substantial change in operation” means, in relation to an installation or mobile plant, a change in operation which, in the opinion of the enforcing authority, may have significant negative effects on human beings or the environment;

“chief inspector” means the inspector constituted to be the chief inspector under regulation 8(3);

“the Department” means the Department of the Environment;

“the Directive” means Council Directive 96/61/EC concerning integrated pollution prevention and control(2);

“emission” means—

- (i) in relation to Part A installations, the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in an installation into the air, water or land;
- (ii) in relation to Part B installations, the direct release of substances or heat from individual or diffuse sources in an installation into the air;
- (iii) in relation to Part C installations, the direct release of substances or heat from individual or diffuse sources in an installation into the air;
- (iv) in relation to Part A mobile plant, the direct or indirect release of substances, vibrations, heat or noise from the mobile plant into the air, water or land;

---

(1) 1954 c. 33 (NI)

(2) OJNo. L 257, 10.10.96, p.26

(v) in relation to Part B mobile plant, the direct release of substances or heat from the mobile plant into the air;

(vi) in relation to Part C mobile plant, the direct release of substances or heat from the mobile plant into the air;

“emission limit value” means the mass, expressed in terms of specific parameters, concentration or level of an emission, which may not be exceeded during one or more periods of time;

“enforcement notice” has the meaning given by regulation 24(1);

“enforcing authority” means, in relation to the exercise of functions under these Regulations, the authority, either the chief inspector or district council, by whom, under regulation 7, the functions are exercisable;

“general binding rules” has the meaning given by regulation 14(1);

“inspector” means a person appointed under regulation 8(1) or (5);

“installation” means—

(i) a stationary technical unit where one or more activities listed in Part 1 of Schedule 1 are carried out; and

(ii) any other location on the same site where any other directly associated activities are carried out which have a technical connection with the activities carried out in the stationary technical unit and which could have an effect on pollution,

and, other than in Schedule 3, references to an installation include references to part of an installation;

“mobile plant” means plant which is designed to move or to be moved whether on roads or otherwise and which is used to carry out one or more activities listed in Part 1 of Schedule 1;

“off-site condition” has the meaning given by regulation 12(12);

“operator”, subject to paragraph (3), means, in relation to an installation or mobile plant, the person who has control over its operation;

“Part A installation”, “Part B installation” and “Part C installation” shall be interpreted in accordance with Part 3 of Schedule 1;

“Part A mobile plant”, “Part B mobile plant” and “Part C mobile plant” shall be interpreted in accordance with Part 3 of Schedule 1;

“permit” means a permit granted under regulation 10;

“Planning Appeals Commission” means the Planning Appeals Commission established under Article 110 of the Planning (Northern Ireland) Order 1991(3);

“pollution” means emissions as a result of human activity which may be harmful to human health or the quality of the environment, cause offence to any human senses, result in damage to material property, or impair or interfere with amenities and other legitimate uses of the environment; and “pollutant” means any substance, vibration, heat or noise released as a result of such an emission which may have such an effect;

“prescribed” means prescribed by regulations;

“revocation notice” has the meaning given by regulation 21(1);

“specified waste management activity” means any one of the following activities—

(i) the disposal of waste in a landfill, whether or not the disposal falls within Section 5.2 of Part 1 of Schedule 1;

- (ii) the disposal of waste falling within Section 5.3 of that Part of that Schedule;
- (iii) the recovery of waste falling within paragraphs (i), (ii), (v) or (vii) of paragraph (c) of Part A of Section 5.4 of that Part of that Schedule;

“statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“substance” includes any chemical element and its compounds and any biological entity or micro-organism, with the exception of radioactive substances within the meaning of Council Directive 80/836/Euratom(4), genetically modified micro-organisms within the meaning of Council Directive 90/219/EEC(5) and genetically modified organisms within the meaning of Council Directive 90/220/EEC(6);

“suspension notice” has the meaning given by regulation 25(1);

“variation notice” has the meaning given by regulation 17(5).

(3) For the purposes of these Regulations–

- (a) where an installation or mobile plant has not been put into operation, the person who will have control over the operation of the installation or mobile plant when it is put into operation shall be treated as the operator of the installation or mobile plant;
- (b) where an installation or mobile plant has ceased to be in operation, the person who holds the permit which applies to the installation or mobile plant shall be treated as the operator of the installation or mobile plant.

(4) In these Regulations–

- (a) a reference to a release into water includes a release into a sewer (within the meaning of Article 2(2) of the Water and Sewerage Services (Northern Ireland) Order 1973)(7);
- (b) a reference to a Council Directive is a reference to that Directive together with any amendment made before the date on which these Regulations are made.

(5) Part 1 of Schedule 1 shall be interpreted in accordance with the provisions as to interpretation in Parts 1 and 2 of that Schedule.

### **Interpretation: “best available techniques”**

**3.—(1)** For the purpose of these Regulations, “best available techniques” means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing in principle the basis for emission limit values designed to prevent and, where that is not practicable, generally to reduce emissions and the impact on the environment as a whole; and for the purpose of this definition–

- (a) “available techniques” means those techniques which have been developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the cost and advantages, whether or not the techniques are used or produced inside the United Kingdom, as long as they are reasonably accessible to the operator;
- (b) “best” means, in relation to techniques, the most effective in achieving a high general level of protection of the environment as a whole;
- (c) “techniques” includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned.

---

(4) OJ No. L 246, 17.9.80, p.1, as amended by Council Directive 84/467/Euratom (OJ No. L 265, 5.10.84, p.4)

(5) OJ No. L 117, 8.5.90, p.1

(6) OJ No. L 117, 8.5.90, p.15

(7) S.I. 1973/70 (NI 2)

(2) Schedule 2 shall have effect in relation to the determination of best available techniques.

### **Fit and proper person**

4.—(1) This regulation applies for the purpose of the discharge of any function under these Regulations which requires the chief inspector to determine whether a person is or is not a fit and proper person to carry out a specified waste management activity.

(2) Whether a person is or is not a fit and proper person to carry out a specified waste management activity shall be determined by reference to the fulfilment of the conditions of the permit which apply or will apply to the carrying out of that activity.

(3) Subject to paragraph (4), a person shall be treated as not being a fit and proper person if it appears to the chief inspector that—

- (a) he or another relevant person has been convicted of a relevant offence;
- (b) the management of the specified waste management activity which is or is to be carried out is not or will not be in the hands of a technically competent person; or
- (c) the person who holds or is to hold the permit has not made and either has no intention of making or is in no position to make financial provision adequate to discharge the obligations arising from the permit in relation to the specified waste management activity.

(4) The chief inspector may, if he considers it proper to do so in any particular case, treat a person as a fit and proper person notwithstanding that paragraph (3)(a) applies in his case.

(5) For the purposes of paragraph (3), “relevant offence” means an offence under any of the following enactments—

- (a) section 114 of the Public Health (Ireland) Act 1878<sup>(8)</sup>;
- (b) section 98(3) or (4) of the Local Government Act (Northern Ireland) 1972<sup>(9)</sup>;
- (c) Article 5, 7(4), 16(4), 18(2), 29, 38(4), 56, or 72(3) of the Pollution Control and Local Government (Northern Ireland) Order 1978<sup>(10)</sup>;
- (d) the Pollution Control (Special Waste) Regulations (Northern Ireland) 1981<sup>(11)</sup>;
- (e) section 9(1) of the Food and Environment Protection Act 1985<sup>(12)</sup>;
- (f) the Transfrontier Shipment of Hazardous Waste Regulations 1988<sup>(13)</sup>;
- (g) the Merchant Shipping (Prevention of Pollution by Garbage) Regulations 1988<sup>(14)</sup>;
- (h) the Transfrontier Shipment of Waste Regulations 1994<sup>(15)</sup>;
- (i) paragraph 15(1), (3), (4) or (5) of Schedule 5 to the Finance Act 1996<sup>(16)</sup>;
- (j) Article 4, 5(8), 22(6), 38(1), 42, 43(9), 44(2), or 74 of the Waste and Contaminated Land (Northern Ireland) Order 1997<sup>(17)</sup>;
- (k) Article 23(1) of the Industrial Pollution Control (Northern Ireland) Order 1997<sup>(18)</sup>;
- (l) The Special Waste Regulations (Northern Ireland) 1998<sup>(19)</sup>;

---

<sup>(8)</sup> 1878 c. 52

<sup>(9)</sup> 1972 c. 9

<sup>(10)</sup> S.I. 1978/1049 (NI 19)

<sup>(11)</sup> S.R. 1981 No. 252

<sup>(12)</sup> 1985 c. 48

<sup>(13)</sup> S.I. 1988/1562

<sup>(14)</sup> S.I. 1988/2292

<sup>(15)</sup> S.I. 1994/1137

<sup>(16)</sup> 1996 c. 8

<sup>(17)</sup> S.I. 1997/2778 (NI 19)

<sup>(18)</sup> S.I. 1997/2777 (NI 18)

<sup>(19)</sup> S.R. 1998 No. 289

- (m) Article 7(1), 9(1), 28(3) or 29 of the Water (Northern Ireland) Order 1999(20);
- (n) regulation 33(1) of these Regulations.

(6) In paragraph (3)(a), “another relevant person” means, in relation to the holder or proposed holder of a permit—

- (a) any person who has been convicted of a relevant offence committed by him in the course of his employment by the holder or proposed holder of the permit or in the course of the carrying on of any business by a partnership one of the members of which was the holder or proposed holder of the permit;
- (b) a body corporate which has been convicted of a relevant offence committed when the holder or proposed holder of the permit was a director, manager, secretary or other similar officer of that body corporate; or
- (c) where the holder or proposed holder of the permit is a body corporate, a person who is a director, manager, secretary or other similar officer of that body corporate and who—
  - (i) has been convicted of a relevant offence; or
  - (ii) was a director, manager, secretary or other similar officer of another body corporate at a time when a relevant offence of which that other body corporate has been convicted was committed.

### **Application to the Crown**

5.—(1) Subject to the provisions of this regulation, these Regulations bind the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

(2) No contravention by the Crown of any provision of these Regulations shall make the Crown criminally liable under regulation 33 and no proceedings may be taken against the Crown under regulation 34 but the High Court may, on the application of the enforcing authority charged with enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), the provisions of these Regulations shall apply to persons in the public service of the Crown as they apply to other persons.

(4) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any specified powers of entry exercisable under regulation 27, that it is requisite or expedient that, in the interests of national security, the powers of entry should not be exercisable in relation to the premises, those powers shall not be exercisable in relation to those premises; and in this paragraph “specified” means specified in the certificate and “Crown premises” means premises held or used by or on behalf of the Crown.

(5) Any reference to the Crown in this regulation includes the Crown in right of Her Majesty’s Government in the United Kingdom.

### **Applications**

6.—(1) An enforcing authority may require any application or type of application made to it under any provision of these Regulations to be made on a form made available by the enforcing authority.

(2) A form made available by an enforcing authority under paragraph (1) shall specify the information required by the enforcing authority to determine the application, which shall include any information required to be contained in the application by the provision of these Regulations under which the application is made.

(3) Where an enforcing authority makes available a form under paragraph (1) in relation to the making of applications to it under a provision of these Regulations any application made to it under that provision shall be made on that form.

(4) Any application made under these Regulations may, with the agreement of the enforcing authority, be sent to the enforcing authority electronically.

(5) Where an application which is required to be accompanied by a fee, map or plan is sent electronically, the fee, map or plan may be sent to the enforcing authority separately from the application but the application shall not be treated as having been received by the enforcing authority until the fee, map or plan has also been received.

(6) An application made under these Regulations may be withdrawn at any time before it is determined.

### **Discharge and scope of functions**

7.—(1) This regulation determines the authority by whom the functions conferred or imposed by these Regulations on an enforcing authority are exercisable and the purposes for which they are exercisable.

(2) Those functions, in their application to a Part A installation or Part A mobile plant, shall be functions of the chief inspector and shall be exercisable for the purpose of achieving a high level of protection of the environment taken as a whole by, in particular, preventing or, where that is not practicable, reducing emissions into the air, water and land.

(3) Those functions, in their application to a Part B installation or Part B mobile plant, shall be functions of the chief inspector and shall be exercisable for the purpose of preventing or, where that is not practicable, reducing emissions into the air.

(4) Those functions, in their application to a Part C installation, shall be functions of the district council in whose district the installation is (or will be) situated and shall be exercisable for the purpose of preventing or, where that is not practicable, reducing emissions into the air.

(5) Those functions, in their application to a Part C mobile plant, shall be functions of—

- (a) where the operator of the mobile plant has his principal place of business in Northern Ireland, the district council in whose district that place of business is;
- (b) where the operator of the mobile plant has his principal place of business outside of Northern Ireland and the mobile plant is not covered by a permit, the district council in whose district the plant is first operated or, where the plant has not been operated in Northern Ireland, the district council in whose district it is intended by the operator that the plant should first be operated;
- (c) where the operator has his principal place of business outside of Northern Ireland and the mobile plant is covered by a permit, the district council which granted the permit,

and shall be exercisable for the purpose of preventing or, where that is not practicable, reducing emissions into the air.

(6) The Department may, as respects functions under these Regulations exercisable by a district council specified in the direction, direct that those functions shall be exercised instead by the chief inspector while the direction remains in force or during a period specified in the direction.

(7) A transfer of functions under paragraph (6) to the chief inspector relating to Part C installations or Part C mobile plant does not make them exercisable by the chief inspector for any other purpose than that mentioned in paragraphs (4) and (5).

(8) The Department may, as respects functions under these Regulations exercisable by the chief inspector in respect of Part B installations specified in the direction, direct that those functions shall

be exercised instead by a district council while the direction remains in force or during a period specified in the direction.

(9) A direction under paragraph (6) may transfer functions exercisable by a district council in relation to all or any description of installations or mobile plant (a “general direction”) or in relation to a specific installation or mobile plant specified in the direction (a “specific direction”) but a direction under paragraph (8) may only be a specific direction.

(10) A direction under paragraph (6) or (8) may include such saving and transitional provisions as the Department considers necessary or expedient.

(11) The Department, on giving or withdrawing a general direction under paragraph (6), shall—

- (a) serve notice of it on the chief inspector and on the district councils affected by the direction; and
- (b) cause notice of it to be published as soon as practicable in the Belfast Gazette and in at least two newspapers circulating in the district of each district council affected by the direction,

and any such notice shall specify the date on which the direction is to take (or took) effect and (where appropriate) its duration.

(12) The Department, on giving or withdrawing a specific direction under paragraph (6) or (8), shall—

- (a) serve notice on the chief inspector, the district council and the operator or the person appearing to the Department to be the operator of the installation or mobile plant affected; and
- (b) cause notice of it to be published in the Belfast Gazette and in at least two newspapers circulating in the district council’s district,

and any such notice shall specify the date on which the direction is to take (or took) effect and (where appropriate) its duration.

(13) The requirements of sub-paragraph (b) of paragraph (11), or, as the case may be, sub-paragraph (b) of paragraph (12) shall not apply in any case where, in the opinion of the Secretary of State, the publication of the notice in accordance with that sub-paragraph would be contrary to the interests of national security.

(14) It shall be the duty of enforcing authorities to follow developments in best available techniques.

### **Appointment of chief inspector and other inspectors**

**8.—(1)** The Department may appoint as inspectors (under whatever title the Department may determine) such persons having suitable qualifications as the Department thinks necessary for carrying these Regulations into effect, and may terminate any appointment made under this paragraph.

(2) The Department may make to, or in respect of, any person so appointed such payments by way of remuneration, allowances or otherwise as the Department may determine.

(3) The Department shall constitute one of the inspectors appointed under paragraph (1) to be the chief inspector.

(4) The functions conferred or imposed by or under these Regulations on the chief inspector as the enforcing authority may, to any extent, be delegated by him to any other inspector appointed under paragraph (1).

(5) A district council may appoint as inspectors (under whatever title the council may determine) such persons having suitable qualifications as the council thinks necessary for carrying these Regulations into effect in the council’s district, and may terminate any appointment made under this paragraph.

(6) An inspector shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under Regulation 26 or 27 if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

## PART 2

### PERMITS

#### **Requirement for permit to operate installation and mobile plant**

9.—(1) No person shall operate an installation or mobile plant after the prescribed date for that installation or mobile plant except under and to the extent authorised by a permit granted by the enforcing authority.

(2) In paragraph (1), the “prescribed date” means the appropriate date set out in or determined in accordance with Schedule 3.

#### **Permits: general provisions**

10.—(1) An application for a permit to operate an installation or mobile plant shall be made to the enforcing authority in accordance with paragraphs 1 to 3 of Part 1 of Schedule 4 and shall be accompanied by any fee prescribed in respect of the application under regulation 22.

(2) Subject to paragraphs (3) and (4), where an application is duly made to the enforcing authority the enforcing authority shall either grant the permit subject to the conditions required or authorised to be imposed by regulation 12 or refuse the permit.

(3) A permit shall not be granted if the enforcing authority considers that the applicant will not be the person who will have control over the operation of the installation or mobile plant concerned after the grant of the permit or will not ensure that the installation or mobile plant is operated so as to comply with the conditions which would be included in the permit.

(4) In the case of an application for a permit that will authorise the carrying out of a specified waste management activity at an installation or by means of mobile plant, the permit shall not be granted unless—

- (a) the chief inspector is satisfied that the applicant is a fit and proper person to carry out that activity; and
  - (b) in the case of an installation where the use of the application site for the carrying out of that activity requires planning permission granted under the Planning (Northern Ireland) Order 1991, such planning permission is in force in relation to that use of the land.
- (5) A permit may authorise the operation of—
- (a) more than one Part A installation or Part A mobile plant on the same site operated by the same operator;
  - (b) more than one Part B installation on the same site operated by the same operator;
  - (c) more than one Part B mobile plant operated by the same operator;
  - (d) more than one Part C installation on the same site operated by the same operator; or
  - (e) more than one Part C mobile plant operated by the same operator,

but may not otherwise authorise the operation of more than one installation or mobile plant.

(6) A permit authorising the operation of a Part A mobile plant may only authorise the operation of that plant on a site specified in the permit and only one site may be specified in each such permit (accordingly, the operation of the plant on a different site shall require a distinct permit).



(7) A permit authorising the operation of an installation or Part A mobile plant shall include a map or plan showing the site of the installation or mobile plant covered by the permit and, in the case of an installation, the location of the installation on that site.

(8) A permit shall be transferred only in accordance with regulation 18 and shall cease to have effect only in accordance with regulation 19 or 20 (surrender) or regulation 21 (revocation) or paragraph (9) (consolidation).

(9) Where—

- (a) the conditions of a permit have been varied under regulation 17 or affected by a partial transfer, surrender or revocation under regulations 18 to 21; or
- (b) there is more than one permit applying to installations on the same site operated by the same operator or to mobile plant operated by the same operator,

the enforcing authority may replace the permit or permits, as the case may be, with a consolidated permit applying to the same installations or mobile plant and subject to the same conditions as the permit or permits being replaced.

(10) Paragraphs 4 to 8 of Part 1 of Schedule 4 shall have effect with respect to applications made under paragraph (1).

(11) Part 2 of Schedule 4 shall have effect in relation to the determination of applications for permits.

(12) Parts 1 and 2 of Schedule 4 shall have effect subject to Part 3 of that Schedule (national security and confidential information).

(13) This regulation is subject to paragraphs 5 and 9 of Schedule 3 (applications for a permit to operate existing installations or mobile plant, as defined in that Schedule).

### **Conditions of permits: general principles**

**11.**—(1) When determining the conditions of a permit, the enforcing authority shall take account of the general principles set out in paragraph (2) and, in the case of a permit authorising the operation of a Part A installation or Part A mobile plant, the additional general principles set out in paragraph (3).

(2) The general principles referred to in paragraph (1) are that installations and mobile plant should be operated in such a way that—

- (a) all the appropriate preventative measures are taken against pollution, in particular through application of the best available techniques; and
- (b) no significant pollution is caused.

(3) The additional general principles referred to in paragraph (1) in relation to a permit authorising the operation of a Part A installation or a Part A mobile plant are that the installation or mobile plant should be operated in such a way that—

- (a) waste production is avoided in accordance with Council Directive [75/442/EEC](#) on waste(21); and where waste is produced, it is recovered or, where that is technically and economically impossible, it is disposed of while avoiding or reducing any impact on the environment;
- (b) energy is used efficiently;
- (c) the necessary measures are taken to prevent accidents and limit their consequences,

and that, upon the definitive cessation of activities, the necessary measures should be taken to avoid any pollution risk and to return the site of the installation or mobile plant to a satisfactory state.

---

(21) OJ No. L 194, 25.7.75, p.39, as amended by Council Directives [91/156/EEC](#) (OJ No. L 78, 26.3.91, p.32) and [91/692/EEC](#) (OJ No. L 377, 31.12.91, p.48) and Commission Decision [96/350/EC](#) (OJ No. L 135, 6.6.96, p.32)

### Conditions of permits: specific requirements

12.—(1) Subject to paragraphs (15) and (16) and regulations 13 and 14, there shall be included in a permit—

- (a) such conditions as the enforcing authority considers appropriate to comply with paragraphs (2) to (8); and
- (b) in relation to any Part A installation or Part A mobile plant authorised by the permit—
  - (i) such other conditions applying in relation to the Part A installation or Part A mobile plant as the chief inspector considers appropriate to comply with paragraph (9); and
  - (ii) such other conditions (if any) applying in relation to the Part A installation or Part A mobile plant, in addition to those required by sub-paragraphs (a) and (b)(i), as appear to the chief inspector to be appropriate, when taken with the condition implied by paragraph (10), for the purpose of ensuring a high level of protection for the environment as a whole, taking into account, in particular, the general principles set out in regulation 11;
- (c) in relation to any Part B or Part C installation or Part B or Part C mobile plant authorised by the permit, such other conditions (if any) applying in relation to the Part B or Part C installation or Part B or Part C mobile plant as appear to the enforcing authority to be appropriate, when taken with the condition implied by paragraph (10), for the purpose of preventing or, where that is not practicable, reducing emissions into the air, taking into account, in particular, the general principles set out in regulation 11(2).

(2) Subject to paragraph (8), a permit shall include emission limit values for pollutants, in particular those listed in Schedule 5, likely to be emitted from the installation or mobile plant in significant quantities, having regard to their nature and, in the case of emissions from a Part A installation or a Part A mobile plant, their potential to transfer pollution from one environmental medium to another.

(3) Where appropriate, the emission limit values required by paragraph (2) may apply to groups of pollutants rather than to individual pollutants.

(4) The emission limit values required by paragraph (2) shall normally apply at the point at which the emissions leave the installation or mobile plant, any dilution being disregarded when determining them.

(5) The effect of a waste water treatment plant may be taken into account when determining the emission limit values applying in relation to indirect releases into water from a Part A installation or Part A mobile plant provided that an equivalent level of protection of the environment as a whole is guaranteed and taking such treatment into account does not lead to higher levels of pollution.

(6) Subject to paragraph (7), the emission limit values required by paragraph (2) shall be based on the best available techniques for the description of installation or mobile plant concerned but shall take account of the technical characteristics of the particular installation or mobile plant being permitted, and, in the case of an installation or Part A mobile plant, its geographical location and the local environmental conditions.

(7) Where an environmental quality standard requires stricter emission limit values than those that would be imposed pursuant to paragraph (6), paragraph (2) shall require those stricter emission limit values; and for the purpose of this paragraph “environmental quality standard” means the set of requirements which must be fulfilled at a given time by a given environment or particular part thereof, as set out in Community legislation<sup>(22)</sup>.

---

(22) See, for example, in relation to air quality standards, Council Directives [80/779/EEC](#) (sulphur dioxide and suspended particulates) (OJ No. L 229, 30.8.80, p.30), [82/884/EEC](#) (lead) (OJ No. L 378, 31.12.82, p.15), [85/293/EEC](#) (nitrogen dioxide) (OJ No. L 87, 27.3.85, p.1) and [92/72/EEC](#) (ozone) (OJ No. L 297, 13.10.92, p.1). In relation to water quality standards, see, for example, Council Directives [75/440](#) (quality required of surface freshwater intended for the abstraction of drinking

(8) Where appropriate, the emission limit values required by paragraph (2) may be supplemented or replaced by equivalent parameters or technical measures.

(9) A permit authorising the operation of a Part A installation or Part A mobile plant shall also include conditions—

- (a) aimed at minimising long distance and transboundary pollution;
- (b) ensuring, where necessary, appropriate protection of the soil and groundwater and appropriate management of waste generated by the installation or mobile plant;
- (c) relating to the periods when the installation or mobile plant is not operating normally where there is a risk that the environment may be adversely affected during such periods, including, in particular, conditions relating to the start up of operations, leaks, malfunctions and momentary stoppages;
- (d) setting out the steps to be taken prior to the operation of the installation or mobile plant and after the definitive cessation of operations;
- (e) setting out suitable emission monitoring requirements, specifying the measurement methodology and frequency and the evaluation procedure, and ensuring that the operator supplies the chief inspector with the data required to check compliance with the permit;
- (f) requiring the operator to supply the chief inspector regularly with the results of the monitoring of emissions and to inform the chief inspector, without delay, of any incident or accident which is causing or may cause significant pollution.

(10) Subject to paragraph (11), there is implied in every permit a condition that, in operating the installation or mobile plant, the operator shall use the best available techniques for preventing or, where that is not practicable, reducing emissions from the installation or mobile plant.

(11) The obligation implied by virtue of paragraph (10) shall not apply in relation to any aspect of the operation of the installation or mobile plant in question which is regulated by a condition imposed under any other paragraph of this regulation.

(12) A permit authorising the operation of an installation or Part A mobile plant may include a condition (an “off-site condition”) requiring an operator to carry out works or do other things in relation to land not forming part of the site of the installation or mobile plant notwithstanding that he is not entitled to carry out the works or do the things, and any person whose consent would be required shall grant, or join in granting, the operator such rights in relation to that land as will enable the operator to comply with any requirements imposed on him by the permit.

(13) Schedule 6 shall have effect in relation to compensation where rights are granted pursuant to paragraph (12).

(14) A permit may, without prejudice to the generality of the previous provisions of this regulation, include conditions—

- (a) imposing limits on the amount or composition of any substance produced or utilised during the operation of the installation or mobile plant in any period;
- (b) which are supplemental or incidental to other conditions contained in the permit.

(15) The Department may give directions to enforcing authorities—

- (a) as to the specific conditions which are, or are not, to be included in all permits, in permits of a specified description or in any particular permit;
- (b) as to the objectives which are to be achieved by conditions included in such permits,

and the enforcing authorities shall include in such permits such conditions as are specified or required to comply with such directions.

(16) Guidance issued by the Department under regulation 38 may sanction reliance by an enforcing authority on any arrangements referred to in the guidance to operate to secure a particular result as an alternative to including a condition in the permit pursuant to this regulation.

(17) Where a Part B mobile plant or Part C mobile plant authorised by a permit is used to carry out an activity on the site of an installation which is authorised by a separate permit, then if different requirements are imposed in the permits as respect the carrying out of the activity the requirements in the permit authorising the operation of the installation shall prevail in the event of any inconsistency.

### **Conditions of permits: Department's notice in relation to emissions into water**

**13.—**(1) In the case of a Part A installation or Part A mobile plant the Department may, at any time, give notice to the chief inspector specifying the emission limit values or conditions (not containing emission limit values) which it considers are appropriate in relation to preventing or reducing emissions into water.

(2) Where a notice under paragraph (1) specifies emission limit values, the emission limit values required by paragraph (2) of regulation 12 in relation to emissions into water from the installation or mobile plant concerned shall be those specified in that notice or such stricter emission limit values as may be determined by the chief inspector in accordance with paragraph (6) of that regulation or required by paragraph (7) of that regulation.

(3) Where a notice under paragraph (1) specifies conditions in relation to emissions into water from an installation or mobile plant, the permit authorising the operation of that installation or mobile plant shall include those conditions or any more onerous conditions dealing with the same matters as the chief inspector considers to be appropriate.

### **General binding rules**

**14.—**(1) Subject to paragraph (2), the Department may make rules (“general binding rules”) containing requirements applying to certain types of installation or mobile plant.

(2) The Department shall only make general binding rules under this regulation applying to Part A installations or Part A mobile plant if it is satisfied that the operation of such installations or mobile plant under the rules will result in the same high level of environmental protection and integrated prevention and control of pollution as would result from the operation of the installations or mobile plant under the conditions that would be included in the permits for those installations or mobile plant pursuant to regulation 12 if the rules did not apply.

(3) Where the Department makes general binding rules an enforcing authority may, at the request of the operator, include in a permit authorising the operation of an installation or mobile plant covered by the rules a condition (a “general binding rules condition”) providing that the aspects of the operation of the installation or mobile plant covered by the requirements in the rules shall be subject to those requirements instead of to conditions included in the permit pursuant to regulation 12.

(4) Where a permit includes a general binding rules condition the requirements in the general binding rules shall be treated as if they were conditions of the permit for the purpose of regulations 23, 24 and 33(1)(b).

(5) The Department may vary general binding rules by means of a notice of variation specifying the variations and the date on which the variations are to take effect, which shall be not less than 3 months after the date on which notice of the variation is given in the Belfast Gazette pursuant to paragraph (9)(c).

(6) The Department may revoke general binding rules by means of a notice of revocation.

(7) Where aspects of the operation of an installation or mobile plant are covered by the requirements in general binding rules which are revoked, the enforcing authority shall vary the permit authorising the operation of the installation or mobile plant under regulation 17 to delete the general

binding rules condition and to insert the conditions that will be required by regulations 11 and 12 when the requirements in the general binding rules no longer apply.

(8) Where the Department revokes general binding rules the requirements in the general binding rules shall continue to be treated under paragraph (4) as if they were conditions of a permit until the variations of the permit required by paragraph (7) take effect.

(9) Where the Department makes, varies or revokes general binding rules it shall—

- (a) serve a copy of the rules, notice of variation or notice of revocation on the chief inspector and all district councils;
- (b) publish the rules, notice of variation or notice of revocation in such manner as it considers appropriate for the purpose of bringing the rules or notice to the attention of operators likely to be affected by them;
- (c) give notice of the making, variation or revocation of the rules in the Belfast Gazette.

### **Review of conditions of permits**

15.—(1) Enforcing authorities shall periodically review the conditions of permits and may do so at any time.

(2) Without prejudice to paragraph (1), a review of a permit under this regulation shall be carried out where—

- (a) the pollution caused by the installation or mobile plant covered by the permit is of such significance that the existing emission limit values of the permit need to be revised or new emission limit values need to be included in the permit;
- (b) substantial changes in the best available techniques make it possible to reduce emissions from the installation or mobile plant significantly without imposing excessive costs; or
- (c) the operational safety of the activities carried out in the installation or mobile plant requires other techniques to be used.

### **Proposed change in the operation of an installation**

16.—(1) Subject to paragraph (4), where an operator of an installation which is permitted under these Regulations proposes to make a change in the operation of that installation he shall, at least 14 days before making the change, notify the enforcing authority.

(2) A notification under paragraph (1) shall be in writing and shall contain a description of the proposed change in the operation of the installation.

(3) An enforcing authority shall, by notice in writing served on the operator, acknowledge receipt of any notification received under paragraph (1).

(4) Paragraph (1) shall not apply where the operator applies under regulation 17(2) for the variation of the conditions of his permit before making the proposed change and the application contains a description of the change.

### **Variation of conditions of permits**

17.—(1) The enforcing authority may at any time vary the conditions of a permit and shall do so if it appears to the enforcing authority at that time, whether as a result of a review under regulation 15, a notification under regulation 13 or 16 or otherwise, that regulations 11 and 12 require conditions to be included which are different from the subsisting conditions.

(2) An operator of an installation or mobile plant which is permitted under these Regulations may apply to the enforcing authority for the variation of the conditions of his permit.

(3) An application under paragraph (2) shall be made in accordance with paragraph 1 of Part 1 of Schedule 7 and shall be accompanied by any fee prescribed in respect of the application under regulation 22; and paragraphs 2 and 3 of Part 1 of Schedule 7 shall have effect with respect to such applications.

(4) Where an application is duly made to the enforcing authority under paragraph (2), the enforcing authority shall determine, in accordance with regulations 11 and 12, whether to vary the conditions of the permit.

(5) Where the enforcing authority decides to vary the conditions of the permit, whether on an application under paragraph (2) or otherwise, it shall serve a notice in writing on the operator (a “variation notice”) specifying the variations of the conditions of the permit and the date or dates on which the variations are to take effect and, unless the notice is withdrawn, the variations specified in the notice shall take effect on the date or dates so specified.

(6) A variation notice served under paragraph (5) shall, unless served for the purpose of determining an application under paragraph (2), require the operator to pay, within such period as may be specified in the notice, any fee prescribed in respect of the variation notice under regulation 22.

(7) Where the enforcing authority decides on an application under paragraph (2) not to vary the conditions of the permit, it shall give notice of its decision to the operator in writing.

(8) Part 2 of Schedule 7 shall have effect in relation to the determination of applications under paragraph (2) and the issuing of variation notices.

(9) Parts 1 and 2 of Schedule 7 shall have effect subject to Part 3 of that Schedule (national security and confidential information).

(10) This regulation and Schedule 7 apply to the variation of any provision other than a condition which is contained in a permit as they apply to the variation of a condition.

### **Transfer of permits**

**18.**—(1) Where the operator of an installation or mobile plant wishes to transfer, in whole or in part, his permit to another person (“the proposed transferee”) the operator and the proposed transferee shall jointly make an application to the enforcing authority to effect the transfer.

(2) An application under paragraph (1) shall be accompanied by the permit and any fee prescribed in respect of the transfer under regulation 22 and shall contain—

- (a) the operator’s and the proposed transferee’s telephone number and address and, if different, any address to which correspondence relating to the application should be sent;
- (b) in the case of an application to effect the transfer of a permit or part of a permit that authorises the carrying out of a specified waste management activity, any information which the applicants wish the chief inspector to take into account when considering whether the transferee is a fit and proper person to carry out that activity.

(3) Where the operator wishes to retain part of his permit (a “partial transfer”), an application under paragraph (1) shall—

- (a) identify the installation or mobile plant to which the transfer applies (the “transferred unit”); and
- (b) where the transfer applies to the operation of an installation or Part A mobile plant, contain a map or plan identifying the part of the site used for the operation of that installation or mobile plant (the “identified part of the site”).

(4) Subject to paragraph (5), the enforcing authority shall effect the transfer unless the enforcing authority considers that the proposed transferee will not be the person who will have control over

the operation of the installation or mobile plant covered by the transfer after the transfer is effected or will not ensure compliance with the conditions of the transferred permit.

(5) In the case of an application to effect the transfer of a permit or part of a permit which authorises the carrying out of a specified waste management activity, the chief inspector shall only effect the transfer if the chief inspector is satisfied that the proposed transferee is a fit and proper person to carry out that activity.

(6) The enforcing authority shall effect a transfer under this regulation by–

(a) in the case of a partial transfer–

(i) issuing a new permit to the proposed transferee which applies to the transferred unit and, where the transfer applies to the operation of an installation or Part A mobile plant, the identified part of the site covered by the transfer, and includes the conditions required by paragraph (7); and

(ii) returning the original permit to the operator, endorsed to record the transfer and varied to show the installation or mobile plant and, where the transfer applies to the operation of an installation or Part A mobile plant, the site covered by the permit after the transfer and the conditions applying after the transfer as required by paragraph (7);

(b) in the case of a transfer of the whole permit, causing the permit to be endorsed with the name and other particulars of the proposed transferee as the operator of the installation or mobile plant concerned,

and the transfer shall take effect from such date as may be agreed with the applicants and specified in the endorsement and, in the case of a partial transfer, the new permit.

(7) In the case of a partial transfer effected under this regulation, the conditions included in the new permit and original permit after the transfer shall be the same as the conditions included in the original permit immediately before the transfer in so far as they are relevant to any installation, site and mobile plant covered by the new permit or the original permit, as the case may be, but subject to such variations as, in the opinion of the enforcing authority, are necessary to take account of the transfer.

(8) If within the period of two months beginning with the date on which the enforcing authority receives an application under paragraph (1), or within such longer period as the enforcing authority and the applicants may agree in writing, the enforcing authority has neither effected the transfer nor given notice in writing to the applicants that it has rejected the application, the application shall, if the applicants notify the enforcing authority in writing that they treat the failure as such, be deemed to have been refused at the end of that period or that longer period, as the case may be.

(9) The enforcing authority may, by notice in writing, require the operator or the proposed transferee to furnish such further information specified in the notice, within the period so specified, as the enforcing authority may require for the purpose of determining an application under this regulation.

(10) Where a notice is served on an operator or proposed transferee under paragraph (9)–

(a) for the purpose of calculating the period of two months mentioned in paragraph (8), no account shall be taken of the period beginning with the date on which notice is served and ending on the date on which the information specified in the notice is furnished; and

(b) if the specified information is not furnished within the period specified, the application shall, if the enforcing authority gives notice in writing to the operator and proposed transferee that it treats the failure as such, be deemed to have been withdrawn at the end of that period.

### **Application to surrender a permit for a Part A installation or Part A mobile plant**

19.—(1) This regulation applies where an operator of a Part A installation or Part A mobile plant ceases or intends to cease operating the installation (in whole or in part) or the mobile plant.

(2) Where this regulation applies, the operator may—

- (a) if he has ceased or intends to cease operating all of the installations and mobile plant covered by the permit, apply to the chief inspector to surrender the whole permit;
- (b) in any other case, apply to the chief inspector to surrender the permit in so far as it authorises the operation of the installation or mobile plant (“the surrender unit”) which he has ceased or intends to cease operating (a “partial surrender”).

(3) An application under paragraph (2) shall be accompanied by any fee prescribed in respect of the application under regulation 22, and shall contain the following information—

- (a) the operator’s telephone number and address and, if different, any address to which correspondence relating to the application should be sent;
- (b) in the case of a partial surrender, a description of the surrender unit and a map or plan identifying the part of the site used for the operation of the surrender unit (the “identified part of the site”);
- (c) a site report describing the condition of the site, or the identified part of the site, as the case may be (“the report site”), identifying, in particular, any changes in the condition of the site as described in the site report contained in the application for the permit; and
- (d) a description of any steps that have been taken to avoid any pollution risk on the report site resulting from the operation of the installation or mobile plant or to return it to a satisfactory state.

(4) If the chief inspector is satisfied, in relation to the report site, that such steps (if any) as are appropriate to avoid any pollution risk resulting from the operation of the Part A installation or Part A mobile plant and to return the site to a satisfactory state have been taken by the operator, he shall accept the surrender and give the operator notice in writing of his determination and the permit shall cease to have effect or, in the case of partial surrender, shall cease to have effect to the extent surrendered, on the date specified in the notice of determination.

(5) If, in the case of a partial surrender, the chief inspector is of the opinion that it is necessary to vary the conditions included in the permit to take account of the surrender, the chief inspector shall specify the necessary variations in the notice of determination given under paragraph (4) and the variations specified in the notice shall take effect on the date specified in the notice.

(6) If the chief inspector is not satisfied as mentioned in paragraph (4) he shall give to the operator notice in writing of his determination stating that the application has been refused.

(7) The chief inspector shall give notice in writing of his determination of an application under this regulation within the period of three months beginning with the date on which the chief inspector receives the application or within such longer period as the chief inspector and the operator may agree in writing.

(8) If the chief inspector fails to give notice in writing of his determination accepting the surrender or refusing the application within the period allowed by or under paragraph (7) the application shall, if the operator notifies the chief inspector in writing that he treats the failure as such, be deemed to have been refused at the end of that period.

(9) The chief inspector may, by notice in writing to the operator, require him to furnish such further information specified in the notice, within the period so specified, as the chief inspector may require for the purpose of determining an application under this regulation.

(10) Where a notice is served on an operator under paragraph (9)—



- (a) for the purpose of calculating the period of three months mentioned in paragraph (7), no account shall be taken of the period beginning with the date on which notice is served and ending on the date on which the information specified in the notice is furnished; and
  - (b) if the specified information is not furnished within the period specified the application shall, if the chief inspector gives notice in writing to the operator that he treats the failure as such, be deemed to have been withdrawn at the end of that period.
- (11) For the purpose of deciding whether a pollution risk results from the operation of a Part A installation or Part A mobile plant for the purpose of this regulation—
- (a) where the operation of the installation or plant involved the carrying out of a specified waste management activity, only risks resulting from carrying out that activity after the relevant date for that activity shall be treated as resulting from the operation of the installation or mobile plant;
  - (b) where the operation of the installation or mobile plant involved the carrying out of other activities, only risks resulting from the carrying out of those other activities after the date on which the permit applying to the installation or mobile plant was granted shall be treated as resulting from the operation of the installation or mobile plant.
- (12) The relevant date for a specified waste management activity for the purpose of paragraph (11) (a) is—
- (a) where the activity was carried out on the site of the installation or mobile plant under a disposal licence which by virtue of Article 10(1) of the Pollution Control and Local Government (Northern Ireland) Order 1978, ceased to have effect in relation to the carrying out of that activity on that site on the granting of the permit applying to the installation or mobile plant, the date on which that disposal licence was granted;
  - (b) in any other case, the date on which the permit applying to the installation or mobile plant was granted.
- (13) In paragraph (12)(a) “disposal licence” has the same meaning as in Article 5(1) of the Pollution Control and Local Government (Northern Ireland) Order 1978.

**Notification of surrender of a permit for a Part B or Part C installation or Part B or Part C mobile plant**

**20.**—(1) This regulation applies where an operator of a Part B or Part C installation or Part B or Part C mobile plant ceases or intends to cease operating the installation (in whole or in part) or the mobile plant.

- (2) Where this regulation applies, the operator may—
  - (a) if he has ceased or intends to cease operating all of the installations and mobile plant covered by the permit, notify the enforcing authority of the surrender of the whole permit;
  - (b) in any other case, notify the enforcing authority of the surrender of the permit in so far as it authorises the operation of the installation or mobile plant (“the surrender unit”) which he has ceased or intends to cease operating (a “partial surrender”).
- (3) A notification under paragraph (2) shall contain the following information—
  - (a) the operator’s telephone number and address and, if different, any address to which correspondence relating to the notification should be sent;
  - (b) in the case of a partial surrender of a permit applying to Part B or Part C installations, a description of the surrender unit and a map or plan identifying the part of the site used for the operation of the surrender unit (the “identified part of the site”);
  - (c) in the case of a partial surrender of a permit applying to Part B or Part C mobile plant, a list of the mobile plant to which it applies;

(d) the date on which the surrender is to take effect, which shall be at least 28 days after the date on which the notice is served on the enforcing authority.

(4) Subject to paragraph (5), where a surrender is notified under this regulation the permit shall cease to have effect on the date specified in the notification or, in the case of partial surrender, shall cease to have effect on that date to the extent surrendered.

(5) If, in the case of a partial surrender, the enforcing authority is of the opinion that it is necessary to vary the conditions of the permit to take account of the surrender, the enforcing authority shall—

- (a) notify the operator of its opinion in writing; and
- (b) serve a variation notice under regulation 17 on the operator specifying the variations of the conditions necessitated by the surrender,

and the permit shall cease to have effect to the extent surrendered on the date on which the variations specified in the variation notice take effect if that date is after the date specified in the notification of the surrender.

### **Revocation of permits**

**21.**—(1) The enforcing authority may at any time revoke a permit, in whole or in part, by serving a notice in writing (“a revocation notice”) on the operator.

(2) Without prejudice to the generality of paragraph (1), the enforcing authority may serve a notice under this regulation in relation to a permit where—

- (a) the permit authorises the carrying out of a specified waste management activity and it appears to the chief inspector that the operator of the installation or mobile plant concerned has ceased to be a fit and proper person to carry out that activity by reason of his having been convicted of a relevant offence within the meaning of regulation 4(5) or by reason of the management of that activity having ceased to be in the hands of a technically competent person;
- (b) the holder of the permit has ceased to be the operator of the installation or mobile plant covered by the permit.

(3) A revocation notice may—

- (a) revoke a permit entirely;
- (b) revoke a permit only in so far as it authorises the operation of some of the installations or mobile plant to which it applies;
- (c) revoke a permit only in so far as it authorises the carrying out of some of the activities which may be carried out in an installation or by means of mobile plant to which it applies.

(4) A revocation notice shall specify—

- (a) in the case of a revocation mentioned in sub-paragraph (b) or (c) of paragraph (3) (a “partial revocation”), the extent to which the permit is being revoked;
- (b) in all cases, the date on which the revocation shall take effect, which shall be at least 28 days after the date on which the notice is served.

(5) If, in the case of a revocation mentioned in sub-paragraph (a) or (b) of paragraph (3) applying to a Part A installation or Part A mobile plant, the chief inspector considers that it is appropriate to require the operator to take steps, once the installation or mobile plant is no longer in operation, to—

- (a) avoid any pollution risk resulting from the operation of the installation or mobile plant on the site or, in the case of a partial revocation, that part of the site used for the operation of that installation or mobile plant; or
- (b) return the site, or that part of the site, to a satisfactory state,

the revocation notice shall specify that this is the case and, in so far as those steps are not already required to be taken by the conditions of the permit, the steps to be taken.

(6) Subject to paragraph (7) and regulation 28(6), a permit shall cease to have effect, or, in the case of a partial revocation, shall cease to have effect to the extent specified in the revocation notice, from the date specified in the notice.

(7) Where paragraph (5) applies the permit shall cease to have effect to authorise the operation of the Part A installation or Part A mobile plant from the date specified in the revocation notice but shall continue to have effect in so far as the permit requires steps to be taken once it is no longer in operation until the chief inspector issues a certificate stating that he is satisfied that all such steps have been taken.

(8) Where a permit continues to have effect as mentioned in paragraph (7), any steps specified in a revocation notice pursuant to paragraph (5) shall be treated as if they were required to be taken by a condition of the permit and regulations 17, 23, 24 and 33(1)(b) shall apply in relation to the requirement to take such steps, and to any other conditions in the permit which require steps to be taken once the installation is no longer in operation, until the chief inspector issues a certificate as mentioned in paragraph (7).

(9) An enforcing authority which has served a revocation notice may, before the date on which the revocation takes effect, withdraw the notice.

(10) Regulation 19(11) shall apply for the purpose of deciding whether a pollution risk results from the operation of a Part A installation or Part A mobile plant for the purpose of this regulation as it applies for the purpose of regulation 19.

### **Fees and charges in relation to permits**

**22.**—(1) There shall be charged by and paid to the enforcing authority such fees and charges as may be prescribed by a scheme under paragraph (2) (whether by being specified in or made calculable under the scheme).

(2) The Department may make and from time to time revise a scheme prescribing—

- (a) fees payable in respect of applications for permits;
- (b) fees payable in respect of, or of applications for, the variation, transfer and surrender of such permits;
- (c) charges payable in respect of the subsistence of such permits; and
- (d) fees and costs payable in connection with appeals under these Regulations.

(3) The Department shall, on making or revising a scheme under paragraph (2), lay a copy of the scheme or of the revisions made to the scheme or, if it considers it more appropriate, the scheme as revised, before the Assembly.

(4) The Department may make separate schemes for fees and charges payable to the chief inspector and fees and charges payable to district councils under these Regulations.

(5) A scheme under paragraph (2) may, in particular—

- (a) allow for reduced fees or charges to be payable in respect of permits granted to the same person;
- (b) provide for the times at which and the manner in which the payments required by the scheme are to be made (subject to the requirements in these Regulations as to the times at which payment is required); and
- (c) make such incidental, supplementary and transitional provisions as appears to the Department to be appropriate.

(6) The Department, in framing a scheme under paragraph (2), shall, so far as practicable, secure that the fees and charges payable under the scheme are sufficient, taking one year with another, to cover the expenditure incurred by—

- (a) the enforcing authorities in exercising their functions under these Regulations in relation to permits;
- (b) the Department in exercising its functions under regulation 13(1) or in preparing guidance in relation to the authorisation of installations and plant covered by district council permits.

(7) A scheme under paragraph (2) may provide that to the extent that the sums paid to a district council under the scheme relate to the expenditure incurred by the Department in preparing guidance in relation to the authorisation of installations and plant covered by district council permits those sums shall be paid by the district council to the Department.

(8) If it appears to the enforcing authority that the holder of a permit has failed to pay a charge due in consideration of the subsistence of the permit, it may revoke the permit under regulation 21.

(9) Any fees and charges received by the chief inspector under this regulation shall be paid into the Consolidated Fund.

(10) In this regulation, “district council permit” means a permit applying to installations or mobile plant in relation to which a district council exercises functions under these Regulations.

## PART 3

### ENFORCEMENT

#### **Duty of the enforcing authority to ensure compliance with conditions**

**23.** While a permit is in force it shall be the duty of the enforcing authority to take such action under these Regulations as may be necessary for the purpose of ensuring that the conditions of the permit are complied with.

#### **Enforcement notices**

**24.—(1)** If the enforcing authority is of the opinion that an operator has contravened, is contravening or is likely to contravene any condition of his permit, the enforcing authority may serve on him a notice (an “enforcement notice”).

(2) An enforcement notice shall—

- (a) state that the enforcing authority is of that opinion;
- (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;
- (e) be in writing.

(3) The steps that may be specified in an enforcement notice as steps that must be taken to remedy the contravention of any condition of a permit may include both steps that must be taken to make the operation of the installation or mobile plant comply with the conditions of the permit and steps that must be taken to remedy the effects of any pollution caused by the contravention.

(4) The enforcing authority may withdraw an enforcement notice at any time.

## **Suspension notices**

**25.**—(1) If the enforcing authority is of the opinion, as respects an installation or mobile plant authorised under these Regulations, that the operation of the installation or mobile plant, or the operation of it in a particular manner, involves an imminent risk of serious pollution, it shall, unless it intends to arrange for steps to be taken under regulation 26(1) in relation to the risk, serve a notice under this regulation (a “suspension notice”) on the operator of the installation or mobile plant.

(2) Paragraph (1) applies whether or not the particular manner of operating the installation or mobile plant in question is regulated by or contravenes a condition of the permit.

(3) If the chief inspector is of the opinion, as respects the carrying out of specified waste management activities under a permit, that the operator carrying out the activities has ceased to be a fit and proper person in relation to those activities by reason of their management having ceased to be in the hands of a technically competent person, he may serve a suspension notice on that operator.

(4) A suspension notice shall—

- (a) state the enforcing authority’s opinion, as mentioned in paragraph (1) or (3), as the case may be;
- (b) in the case of a notice served under paragraph (1), specify—
  - (i) the imminent risk involved in the operation of the installation or mobile plant;
  - (ii) the steps that must be taken to remove it and the period within which they must be taken;
- (c) state that the permit shall, until the notice is withdrawn, cease to have effect to authorise the operation of the installation or mobile plant or the carrying out of specified activities in the installation or by means of the mobile plant;
- (d) where the permit is to continue to have effect to authorise the carrying out of activities, state any steps, in addition to those already required to be taken by the conditions of the permit, that are to be taken in carrying out those activities; and
- (e) be in writing.

(5) Where a suspension notice is served under this regulation the permit shall, on the service of the notice, cease to have effect as stated in the notice.

(6) The enforcing authority may withdraw a suspension notice at any time and shall withdraw a notice when it is satisfied—

- (a) in the case of a notice served under paragraph (1), that the steps required by the notice to remove the imminent risk of serious pollution have been taken;
- (b) in the case of a notice served under paragraph (3), that the management of the specified waste management activities is in the hands of a technically competent person.

## **Power of the enforcing authority to prevent or remedy pollution**

**26.**—(1) If the enforcing authority is of the opinion, as respects the operation of an installation or mobile plant authorised under these Regulations, that the operation of the installation or mobile plant, or the operation of it in a particular manner, involves an imminent risk of serious pollution, the enforcing authority may arrange for steps to be taken to remove that risk.

(2) Where the commission of an offence under regulation 33(1)(a), (b) or (d) causes any pollution the enforcing authority may arrange for steps to be taken towards remedying the effects of the pollution.

(3) An enforcing authority which intends to arrange for steps to be taken under paragraph (2) shall, at least seven days before the steps are taken, notify the operator in writing of the steps that are to be taken.

(4) Subject to paragraph (5), where an enforcing authority arranges for steps to be taken under this regulation it may recover the cost of taking those steps from the operator concerned.

(5) No costs shall be recoverable under paragraph (4) where the enforcing authority arranges for steps to be taken under paragraph (1) if the operator shows that there was no imminent risk of serious pollution requiring any such steps to be taken and no other costs shall be recoverable which the operator shows to have been unnecessarily incurred by the enforcing authority.

### **Powers of inspectors and others**

**27.**—(1) An inspector may, on production (if so required) of his authority, exercise any of the powers in paragraph (3) for the purpose of—

- (a) determining whether any provisions of the pollution control statutory provisions in the case of an enforcing authority are being, or have been, complied with;
  - (b) discharging one or more of the functions conferred or imposed on an enforcing authority by or under the pollution control statutory provisions; or
  - (c) determining whether and, if so, how such a function should be discharged.
- (2) Those powers, so far as exercisable in relation to premises, are exercisable in relation—
- (a) to premises on which activities listed in Part 1 of Schedule 1 are, or are believed (on reasonable grounds) to be carried out; and
  - (b) to premises on which activities listed in Part 1 of Schedule 1 have been carried out (whether or not the activities were so listed when they were carried out) the condition of which is believed (on reasonable grounds) to be such as to give rise to a risk of serious pollution.
- (3) The powers of the inspector are—
- (a) to enter at any reasonable time (or, in an emergency, at any time and, if need be, by force) any premises which he has reason to believe it is necessary for him to enter;
  - (b) on entering any premises by virtue of sub-paragraph (a) to take with him—
    - (i) any person duly authorised by the chief inspector or, as the case may be, the district council and, if the inspector has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and
    - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
  - (c) to make such examination and investigation as may in any circumstances be necessary;
  - (d) as regards any premises which he has power to enter, to direct that those premises or any part of them or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c);
  - (e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
  - (f) to take samples of any articles or substances found in or on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;
  - (g) in the case of any article or substance found in or on any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause pollution, to cause it to be dismantled or subjected to any process or test ( but not so as to damage or destroy it unless this is necessary);
  - (h) in the case of any such article or substance as is mentioned in sub-paragraph (g), to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—

- (i) to examine it and do to it anything which he has power to do under that sub-paragraph;
  - (ii) to ensure that it is not tampered with before his examination of it is completed;
  - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under regulation 33 or any other proceedings relating to a permit;
- (i) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers;
  - (j) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which are required to be kept under the pollution control statutory provisions or which it is necessary for him to see for the purposes of an examination or investigation under sub-paragraph (c) and to inspect and take copies of, or of any entry in, the records;
  - (k) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any powers conferred on him by this regulation;
  - (l) any other power for the purpose mentioned in paragraph (1) which is conferred by regulations made by the Department.
- (4) The powers which under paragraphs (1) and (3) are conferred in relation to any premises for the purpose of enabling an enforcing authority to determine whether any provision of the pollution control statutory provisions in the case of that enforcing authority is being, or has been, complied with shall include power, in order to obtain the information on which that determination may be made—
- (a) to carry out experimental borings or other works on those premises; and
  - (b) to install, keep or maintain monitoring and other apparatus there.
- (5) Except in an emergency, in any case where it is proposed to take heavy equipment on to any premises which are to be entered, any entry by virtue of this regulation shall only be effected—
- (a) after the expiration of at least 7 days' notice in writing of the proposed entry given to a person who appears to the inspector to be in occupation of the premises in question, and
  - (b) either—
    - (i) with the consent of a person who is in occupation of those premises; or
    - (ii) under the authority of a warrant by virtue of Schedule 8.
- (6) Except in an emergency, where an inspector proposes to enter any premises and—
- (a) entry has been refused and he apprehends on reasonable grounds that the use of force may be necessary to effect entry; or
  - (b) he apprehends on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry,
- any entry on those premises by virtue of this regulation shall only be effected under the authority of a warrant by virtue of Schedule 8.
- (7) The Department may by regulations make provisions as to the procedure to be followed in connection with the taking of, and the dealing with, samples under paragraph (3)(f).
- (8) Where an inspector proposes to exercise the power conferred by paragraph (3)(g) in the case of an article or substance found on any premises, he shall, if so requested by a person who at the

time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(9) Before exercising the power conferred by paragraph (3)(g) in the case of any article or substance, an inspector shall consult—

- (a) such persons having duties on the premises where the article or substance is to be dismantled or subjected to the process or test; and
- (b) such other persons,

as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power.

(10) No answer given by a person in pursuance of a requirement imposed under paragraph (3)(i) shall be admissible in evidence against that person in any proceedings.

(11) Nothing in this regulation shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court.

(12) In this regulation and Schedule 8—

“emergency” means a case in which it appears to the inspector in question—

- (a) that there is an immediate risk of serious pollution; or
- (b) that circumstances exist which are likely to endanger life or health,

and that immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or to effect a remedy;

“pollution control statutory provisions” means—

- (a) the Environment (Northern Ireland) Order 2002 and regulations made thereunder;
- (b) the Control of Major Accident Hazards Regulations (Northern Ireland) 2000<sup>(23)</sup>; and
- (c) regulations made under section 2(2) of the European Communities Act 1972<sup>(24)</sup> to the extent that the regulations relate to pollution;

“premises” includes any land, vehicle or vessel; and “vehicle” means any motor vehicle or trailer within the meaning of the Road Traffic (Northern Ireland) Order 1981<sup>(25)</sup>.

(13) Schedule 8 shall have effect with respect to the powers of entry and related powers which are conferred by this regulation.

(14) This regulation and Schedule 8 apply (with appropriate modifications) in relation to mobile plant as they apply to premises.

(15) Nothing in section 98 of the Local Government Act (Northern Ireland) 1972 shall apply to functions conferred on a district council under these Regulations.

## PART 4

### APPEALS

#### Appeals from decisions with respect to permits

**28.**—(1) Subject to paragraph (3), the following persons, namely—

---

<sup>(23)</sup> SR 2000 No. 93

<sup>(24)</sup> 1972 c. 68

<sup>(25)</sup> S.I. 1981/154 (NI 1)



- (a) a person who has been refused the grant of a permit under regulation 10;
- (b) a person who has been refused the variation of the conditions of a permit on an application under regulation 17(2);
- (c) a person who is aggrieved by the conditions attached to his permit following an application under regulation 10 or by a variation notice following an application under regulation 17(2);
- (d) a person whose application under regulation 18(1) for an enforcing authority to effect the transfer of a permit has been refused or who is aggrieved by the conditions attached to his permit to take account of such a transfer;
- (e) a person whose application under regulation 19(2) to surrender a permit has been refused, or who is aggrieved by the conditions attached to his permit to take account of the surrender;
- (f) a person who is aggrieved by a determination by an enforcing authority that information is not commercially confidential under regulation 32(2) or (5),

may appeal against the decision of the enforcing authority to the Planning Appeals Commission.

(2) Subject to paragraph (3), a person on whom a variation notice is served, other than following an application under regulation 17(2) or on whom a revocation notice, an enforcement notice or a suspension notice is served may appeal against the notice to the Planning Appeals Commission.

(3) Paragraphs (1) and (2) shall not apply where the decision or notice, as the case may be, implements a direction of the Department given under regulations 12(15) or 37 or paragraph 14(13) of Schedule 4 or 6(13) of Schedule 7, or a determination of an appeal by the Planning Appeals Commission.

(4) Where an appeal is brought against the decision of an enforcing authority under paragraph (1), the Planning Appeals Commission may allow or dismiss the appeal or may reverse or vary any part of the decision, and any determination of the Planning Appeals Commission on the appeal shall have the like effect as a decision of the enforcing authority.

(5) On the determination of an appeal under paragraph (2) the Planning Appeals Commission may either quash or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as it may in the circumstances think fit.

(6) Where an appeal is brought under paragraph (2) against a revocation notice, the revocation shall not take effect pending the final determination or the withdrawal of the appeal.

(7) Where an appeal is brought under paragraph (1)(c), (d) or (e) in relation to the conditions attached to a permit, the bringing of the appeal shall not have the effect of suspending the operation of the conditions.

(8) Where an appeal is brought under paragraph (2) against a variation notice, an enforcement notice or a suspension notice, the bringing of the appeal shall not have the effect of suspending the operation of the notice.

(9) Regulations 11 and 12 shall apply where the Planning Appeals Commission, in exercising any of its powers under paragraphs (4) or (5), gives directions as to the conditions to be attached to a permit as they would apply to the enforcing authority when determining the conditions of the permit.

(10) Schedule 9 shall have effect in relation to the making and determination of appeals under this regulation.

## PART 5

### INFORMATION AND PUBLICITY

#### **Information**

**29.**—(1) For the purpose of the discharge of its functions under these Regulations, the Department may, by notice in writing served on an enforcing authority, require the enforcing authority to furnish such information about the discharge of its functions as an enforcing authority as it may require.

(2) For the purposes of the discharge of their functions under these Regulations, the Department or an enforcing authority may, by notice in writing served on any person, require that person to furnish such information as is specified in the notice, in such form and within such period following service of the notice or at such time as is so specified.

(3) For the purposes of this regulation, the discharge by the Department of an obligation of the United Kingdom under the Community Treaties or any international agreement relating to the environment shall be treated as a function of the Department under these Regulations and the compilation of an inventory of emissions (whether or not from installations or mobile plant) shall be treated as a function of the chief inspector under these Regulations.

(4) The information which a person may be required to furnish by a notice served under paragraph (2) includes information on emissions which, although it is not in the possession of that person or would not otherwise come into the possession of that person, is information which it is reasonable to require that person to compile for the purpose of complying with the notice.

#### **Public registers of information**

**30.**—(1) Subject to regulations 31 and 32 and to paragraphs 2 to 5 of Schedule 10 it shall be the duty of each enforcing authority, as respects installations or mobile plant for which it is the enforcing authority, to maintain a register containing the particulars described in paragraph 1 of that Schedule.

(2) Subject to paragraph (3), the register maintained by a district council shall also contain any particulars contained in any register maintained by the chief inspector relating to the operation of an installation or Part A mobile plant in the district of the district council in relation to which the chief inspector has functions under these Regulations.

(3) The chief inspector shall furnish each district council with the particulars which are necessary to enable it to discharge its duty under paragraph (2).

(4) Where information of any description is excluded from any register by virtue of regulation 32, a statement shall be entered in the register indicating the existence of information of that description.

(5) It shall be the duty of each enforcing authority—

- (a) to secure that the registers maintained by them under this regulation are available, at all reasonable times, for inspection by the public free of charge; and
- (b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges.

(6) Registers under this regulation may be kept in any form.

#### **Exclusion from registers of information affecting national security**

**31.**—(1) No information shall be included in a register maintained under regulation 30 if and so long as, in the opinion of the Secretary of State, the inclusion in the register of that information, or information of that description, would be contrary to the interests of national security.

(2) The Secretary of State may, for the purpose of securing the exclusion from registers of information to which paragraph (1) applies, give to enforcing authorities directions—

- (a) specifying information, or descriptions of information, to be excluded from their registers; or
- (b) specifying descriptions of information to be referred to the Secretary of State for his determination,

and no information referred to the Secretary of State in pursuance of sub-paragraph (b) shall be included in any such register until the Secretary of State determines that it should be so included.

(3) The enforcing authority shall notify the Secretary of State of any information it excludes from the register in pursuance of directions under paragraph (2).

(4) A person may, as respects any information which appears to him to be information to which paragraph (1) may apply, give a notice to the Secretary of State specifying the information and indicating its apparent nature; and, if he does so—

- (a) he shall notify the enforcing authority that he has done so; and
- (b) no information so notified to the Secretary of State shall be included in any such register until the Secretary of State has determined that it should be so included.

#### **Exclusion from registers of certain confidential information**

**32.—**(1) No information relating to the affairs of any individual or business shall be included in a register maintained under regulation 30, without the consent of that individual or the person for the time being carrying on that business, if and so long as the information—

- (a) is, in relation to him, commercially confidential; and
- (b) is not required to be included in the register in pursuance of a direction under paragraph (7),

but information is not commercially confidential for the purposes of this regulation unless it is determined under this regulation to be so by the enforcing authority or, on appeal, by the Planning Appeals Commission.

(2) Where information is furnished to an enforcing authority for the purpose of these Regulations the person furnishing it may apply to the enforcing authority to have the information excluded from the register on the ground that it is commercially confidential (as regards himself or another person) and the enforcing authority shall determine whether the information is or is not commercially confidential.

(3) Notice of determination under paragraph (2) shall be given to the applicant in writing within the period of 28 days beginning with the date of the application or within such longer period as may be agreed with the applicant.

(4) If the enforcing authority fails to give notice of its determination of an application under paragraph (2) within the period allowed by or under paragraph (3), the enforcing authority shall, if the applicant notifies the enforcing authority in writing that he treats the failure as such, be deemed to have determined at the end of that period that the information is not commercially confidential.

(5) Where it appears to an enforcing authority that any information which has been obtained by the enforcing authority under or by virtue of any provision of these Regulations and which is required to be included in the register unless excluded under this regulation might be commercially confidential, the enforcing authority shall (unless the information is the subject of an application under paragraph (2))—

- (a) give to the person to whom or to whose business it relates notice in writing that that information is required to be included in the register unless excluded under this regulation; and
- (b) give that person a reasonable opportunity—
  - (i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and

(ii) of making representations to the enforcing authority for the purpose of justifying any such objection,

and, if any representations are made, the enforcing authority shall, having taken the representations into account, give that person notice of its determination as to whether the information is or is not commercially confidential.

(6) Where, under paragraph (2) or (5), an enforcing authority determines that information is not commercially confidential—

- (a) the information shall not be entered in the register until the end of the period of 21 days beginning with the date on which the determination is notified to the person concerned or the determination is deemed to have been made under paragraph (4), as the case may be;
- (b) if that person before the end of that period appeals to the Planning Appeals Commission against the decision under regulation 28(1)(f), the information shall not be entered in the register until the end of the period of seven days following the day on which the appeal is finally determined or is withdrawn.

(7) The Department may give to the enforcing authority directions as to specified information, or descriptions of information, which the public interest requires to be included in registers maintained under regulation 30 notwithstanding that the information may be commercially confidential.

(8) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purposes of this regulation at the expiry of the period of four years beginning with the date of the determination by virtue of which it was excluded or at the expiry of such shorter period as may be specified in the notice of that determination for the purpose of this paragraph; but the person who furnished it may apply to the enforcing authority for the information to remain excluded from the register on the ground that it is still commercially confidential and the enforcing authority shall determine whether or not that is the case.

(9) Paragraph (6) shall apply in relation to a determination under paragraph (8) as it applies in relation to a determination under paragraph (2) or (5).

(10) Information is, for the purposes of any determination under this regulation, commercially confidential, in relation to any individual or other person, if its being contained in the register would prejudice to an unreasonable degree the commercial interests of that individual or other person.

## PART 6

### PROVISION AS TO OFFENCES

#### Offences

**33.—**(1) It is an offence for a person—

- (a) to contravene regulation 9(1);
- (b) to fail to comply with or to contravene a condition of a permit;
- (c) to fail to comply with regulation 16(1);
- (d) to fail to comply with the requirements of an enforcement notice or a suspension notice;
- (e) without reasonable excuse to fail to comply with any requirement imposed under regulation 27;
- (f) without reasonable excuse—
  - (i) to fail or refuse to provide facilities or assistance or any information or to permit any inspection reasonably required by an inspector in the execution of his powers or duties under regulation 27; or

- (ii) to prevent any other person from appearing before an inspector, or answering any questions to which an inspector may require an answer, pursuant to regulation 27(3);
  - (g) without reasonable excuse to fail to comply with any requirement imposed by a notice under regulation 29(2);
  - (h) to make a statement which he 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 furnish any information imposed by or under of these Regulations; or
    - (ii) for the purpose of obtaining the grant of a permit to himself or any other person, or the variation, transfer or surrender of a permit;
  - (i) intentionally to make a false entry in any record required to be kept under a condition of a permit;
  - (j) with intent to deceive, to forge or use a document issued or authorised to be issued under a condition of a permit or required for any purpose under a condition of a permit or to make or have in his possession a document so closely resembling any such document as to be likely to deceive;
  - (k) to fail to comply with an order made by a court under regulation 36;
  - (l) intentionally to obstruct an inspector in the exercise or performance of his powers or duties;
  - (m) falsely to pretend to be an inspector.
- (2) A person guilty of an offence under sub-paragraph (a), (b), (d) or (k) of paragraph (1) shall be liable—
- (a) on summary conviction, to a fine not exceeding £30,000 or to imprisonment for a term not exceeding six months or to both;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding five years or to both.
- (3) A person guilty of an offence under sub-paragraph (c), (g), (h), (i) or (j) of paragraph (1) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.
- (4) A person guilty of an offence under sub-paragraph (e), (f) or (m) of paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) A person guilty of an offence under sub-paragraph (l) of paragraph (1) shall be liable—
- (a) in the case of an offence of obstructing an inspector in the execution of his powers under regulation 26—
    - (i) on summary conviction, to a fine not exceeding the statutory maximum;
    - (ii) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or to both;
  - (b) in any other case, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (6) For the purposes of this regulation, section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited”.

(7) Where the affairs of a body corporate are managed by its members, paragraph (6) shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

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

### **Enforcement by High Court**

**34.** If the enforcing authority is of the opinion that proceedings for an offence under regulation 33(1)(d) would afford an ineffectual remedy against a person who has failed to comply with the requirements of an enforcement notice or a suspension notice, the enforcing authority may take proceedings in the High Court for the purpose of securing compliance with the notice.

### **Admissibility of evidence**

**35.—**(1) Information provided or obtained pursuant to or under a condition of a permit (including information so provided or obtained, or recorded, by means of any apparatus) shall be admissible in evidence in any proceedings, whether against the person subject to the condition or any other person.

(2) For the purposes of paragraph (1), apparatus shall be presumed in any proceedings to register or record accurately, unless the contrary is shown or the permit otherwise provides.

(3) Where—

- (a) by virtue of a condition of a permit granted by an enforcing authority an entry is required to be made in any record as to the observance of any condition of the permit; and
- (b) the entry has not been made,

that fact shall be admissible as evidence that that condition has not been observed.

(4) In this regulation—

“apparatus” includes any meter or other device for measuring, assessing, determining, recording or enabling to be recorded, the volume, temperature, radioactivity, rate, nature, origin, composition, or effect of any substance, flow, discharge, emission, deposit or abstraction;

“condition of a permit” includes any requirement to which a person is subject under or in consequence of a permit.

### **Power of court to order cause of offence to be remedied**

**36.—**(1) Where a person is convicted of an offence under regulation 33(1)(a), (b) or (d) in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying those matters.

(2) The time fixed by an order under paragraph (1) may be extended or further extended by order of the court on an application made before the end of the time as originally fixed or extended under this paragraph, as the case may be.

(3) Where a person is ordered under paragraph (1) to remedy any matters, that person shall not be liable under regulation 33 in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed under paragraph (2).

## PART 7

### THE DEPARTMENT'S POWERS

#### **Directions to enforcing authorities**

**37.**—(1) The Department may give directions to enforcing authorities of a general or specific character with respect to the carrying out of any of their functions under these Regulations.

(2) Without prejudice to the generality of the power conferred by paragraph (1), a direction under that paragraph may direct enforcing authorities—

- (a) to exercise any of their powers under these Regulations or to do so in such circumstances as may be specified in the directions or in such manner as may be so specified; or
- (b) not to exercise those powers, or not to do so in such circumstances or such manner as may be specified in the directions.

(3) Where the Department receives information pursuant to Article 17(1) of the Directive in relation to the operation of an installation outside of the United Kingdom which is likely to have a significant negative effect on the environment of Northern Ireland, it shall, for the purpose of complying with Article 17(2) of the Directive, direct the chief inspector to take such steps as it considers appropriate for the purpose of bringing the information to the attention of the persons in Northern Ireland likely to be affected by the operation of the installation and providing them with an opportunity to comment on that information.

(4) Any direction given under these Regulations shall be in writing and may be varied or revoked by a further direction.

(5) It shall be a duty of an enforcing authority to comply with any direction which is given to it under these Regulations.

#### **Guidance to enforcing authorities**

**38.**—(1) The Department may issue guidance to enforcing authorities with respect to the carrying out of any of their functions under these Regulations.

(2) An enforcing authority, in carrying out any of its functions under these Regulations, shall have regard to any guidance issued by the Department under this regulation.

#### **Plans relating to emissions**

**39.**—(1) The Department may make plans for—

- (a) the setting of limits on the total amount, or the total amount in any period, of emissions from all or any description of source within Northern Ireland; or
- (b) the allocation of quotas relating to such emissions.

(2) Where the Department allocates a quota in a plan made under paragraph (1) it may also make a scheme for the trading or other transfer of the quota so allocated.

(3) In this regulation, “emission” means the direct or indirect release of any substance from individual or diffuse sources into the air, water or land.

## PART 8

### MISCELLANEOUS AND SUPPLEMENTAL PROVISIONS

#### **Disclosure of information**

**40.**—(1) Notwithstanding any prohibition or restriction imposed by or under any statutory provision or rule of law, information of any description may be disclosed—

- (a) by the Department to any enforcing authority; or
- (b) by any enforcing authority to the Department or any other enforcing authority,

for the purpose of facilitating the carrying out by the Department or by any enforcing authority of any of their functions under these Regulations; and no person shall be subject to any civil or criminal liability in consequence of any disclosure made by virtue of this paragraph.

(2) Nothing in this regulation shall authorise the disclosure of information, disclosure of which would, in the opinion of the Secretary of State, be contrary to the interests of national security.

(3) No information disclosed to any person under this regulation shall be disclosed by that person to any other person otherwise than in accordance with the provisions of this regulation, or any other statutory provision which authorises or requires the disclosure, if that information is information—

- (a) which relates to a trade secret of any person or which otherwise is or might be commercially confidential in relation to any person; or
- (b) whose disclosure otherwise than under this regulation would, in the opinion of the Secretary of State, be contrary to the interests of national security.

(4) Any authorisation by or under this regulation of the disclosure of information by or to any person shall also be taken to authorise the disclosure of that information by or, as the case may be, to any officer of his who is authorised by him to make the disclosure or, as the case may be, to receive the information.

(5) Information is for the purposes of this regulation commercially confidential in relation to any person if its disclosure would prejudice to an unreasonable degree the commercial interests of that person.

#### **Consequential amendments**

**41.** The statutory provisions mentioned in Schedule 11 shall have effect with the amendments there specified (being amendments consequential on provisions of these Regulations).

Sealed with the Official Seal of the Department of the Environment on 31st January 2003

L.S.

*J Goldring*  
A Senior Officer of the  
Department of the Environment