
STATUTORY RULES OF NORTHERN IRELAND

2003 No. 46

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

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⁽¹⁾; and

(c) regulations made under section 2(2) of the European Communities Act 1972⁽²⁾ 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⁽³⁾.

(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.

⁽¹⁾ SR 2000 No. 93

⁽²⁾ 1972 c. 68

⁽³⁾ S.I. 1981/154 (NI 1)