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DRAFT STATUTORY INSTRUMENTS

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**2010 No.**

**The Environmental Permitting  
(England and Wales) Regulations 2010**

**PART 4**

**Enforcement and offences**

**Enforcement notices**

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

(2) An enforcement notice must—

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

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

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

(4) The regulator may withdraw an enforcement notice at any time by further notice served on the operator.

**Suspension notices**

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

(2) If the regulator considers that the operation of a regulated facility under an environmental permit involves a risk of serious pollution, it may serve a suspension notice on the operator.

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

(4) A suspension notice served for the purpose of paragraph (2) must—

- (a) specify—
  - (i) the risk of serious pollution mentioned in that paragraph,
  - (ii) the steps that must be taken to remove that risk, and
  - (iii) the period within which the steps must be taken;

- (b) state that the environmental permit ceases to have effect to the extent specified in the notice until the notice is withdrawn; and
  - (c) if the environmental permit continues to authorise the operation of a regulated facility, state any steps (in addition to those already required to be taken by the environmental permit conditions) that are to be taken when operating that regulated facility.
- (5) The regulator may suspend an environmental permit under regulation 65(5) by serving a suspension notice on the operator.
- (6) A suspension notice served for the purpose of paragraph (5) must—
- (a) specify the reason for the suspension;
  - (b) state the sum payable by the operator and the period within which it is to be paid; and
  - (c) state that the environmental permit ceases to have effect to the extent specified in the notice until the notice is withdrawn.
- (7) If a suspension notice is served, the environmental permit ceases to have effect to the extent stated in the notice.
- (8) The regulator—
- (a) may withdraw a suspension notice at any time by further notice served on the operator; and
  - (b) must withdraw a notice when satisfied that the steps specified in it have been taken.

## Offences

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

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

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

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

(4) It is an offence for a person—

- (a) to fail to comply with a notice under regulation 60(1) requiring the provision of information, without reasonable excuse;
- (b) to make a statement which the person knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made—
  - (i) in purported compliance with a requirement to provide information imposed by or under a provision of these Regulations,
  - (ii) for the purpose of obtaining the grant of an environmental permit to any person, or the variation, transfer in whole or in part, or surrender in whole or in part of an environmental permit, or
  - (iii) for the purpose of obtaining, renewing or amending the registration of an exempt facility;
- (c) intentionally to make a false entry in a record required to be kept under an environmental permit condition;
- (d) with intent to deceive—

- (i) to forge or use a document issued or authorised to be issued or required for any purpose under an environmental permit condition, or
  - (ii) to make or have in the person's possession a document so closely resembling such a document as to be likely to deceive.
- (5) It is an offence for an establishment or undertaking to—
- (a) fail to comply with paragraph 14(3) or (4) of Schedule 2; or
  - (b) intentionally make a false entry in a record required to be kept under that paragraph.
- (6) If an offence committed by a person under this regulation is due to the act or default of some other person, that other person is also guilty of the offence and liable to be proceeded against and punished accordingly, whether or not proceedings for the offence are taken against the first-mentioned person.

### Penalties

- 39.**—(1) A person guilty of an offence under regulation 38(1), (2) or (3) is liable—
- (a) on summary conviction to a fine not exceeding £50,000 or imprisonment for a term not exceeding 12 months, or to both; or
  - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years, or to both.
- (2) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003(1), paragraph (1)(a) has effect as if for “12 months” there were substituted “6 months”.
- (3) A person guilty of an offence under regulation 38(4) is liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding 2 years, or to both.
- (4) An establishment or undertaking guilty of an offence under regulation 38(5) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### Defences

- 40.**—(1) It is a defence for a person charged with an offence under regulation 38(1), (2) or (3) to prove that the acts alleged to constitute the contravention were done in an emergency in order to avoid danger to human health in a case where—
- (a) the person took all such steps as were reasonably practicable in the circumstances for minimising pollution; and
  - (b) particulars of the acts were furnished to the regulator as soon as reasonably practicable after they were done.
- (2) A person who knowingly permits a water discharge activity or groundwater activity where the discharge is water from an abandoned mine or an abandoned part of a mine is not guilty of an offence under regulation 38(1) unless—
- (a) the person is the owner or former operator of the mine or that part of it; and
  - (b) the mine or the part of the mine was abandoned after 31st December 1999.

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

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

### **Offences by bodies corporate**

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

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

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

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

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

### **Enforcement by the High Court**

**42.** If the regulator considers that proceedings against a person for an offence under regulation 38(3) would afford an ineffectual remedy against the person, the regulator may take proceedings in the High Court for the purpose of securing compliance with the enforcement notice, suspension notice, prohibition notice, landfill closure notice or mining waste facility closure notice.

### **Admissibility of evidence**

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

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

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

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

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

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