

## SCHEDULE 5

Regulation 51

### Enforcement powers

## PART 1

### Powers of authorised persons

#### **Environment Act 1995 etc. powers**

1. The enforcement powers of an authorised person under section 108 of the Environment Act 1995 and Article 72 of the Waste and Contaminated Land (Northern Ireland) Order 1997 are extended to waste vessels in the area specified in regulation 2(1)(b).

#### **Information notice**

2. An authorised person may, by notice served on any person, require that person to provide 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.

#### **Enforcement and prohibition notices**

3.—(1) An authorised person may serve a notice on any person who contravenes or who the authorised person has reasonable grounds to suspect may contravene these Regulations or the Community Regulation—

- (a) requiring him to act in accordance with the Regulations or the Community Regulation (in this Schedule referred to as an “enforcement notice”); or
- (b) prohibiting him from acting in breach of them (in this Schedule referred to as a “prohibition notice”).

(2) The notice must give reasons for serving it and, if appropriate, specify what action must be taken and give time limits.

#### **Appeals against enforcement and prohibition notices**

4.—(1) Any person who is aggrieved by an enforcement or prohibition notice may appeal to a magistrates’ court or, in Scotland, to the sheriff.

(2) The procedure on an appeal to a magistrates’ court is by way of complaint, and the Magistrates’ Courts Act 1980(1) or, in the case of Northern Ireland, the Magistrates’ Court (Northern Ireland) Order 1981(2) applies to the proceedings.

(3) An appeal to the sheriff is by summary application.

(4) The period within which an appeal may be brought is 28 days or, in the case of an enforcement notice, the period specified in the notice, whichever ends earlier.

(5) An enforcement or prohibition notice must state—

- (a) the right of appeal to a magistrates’ court or the sheriff;
- (b) the period in which such an appeal may be brought.

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(1) 1980 c. 43; sections 51 and 52 have been substituted by section 47 of the Courts Act 2003 (c. 39).

(2) S.I. 1981/1675 (N.I. 26).

### **Powers to seize waste**

- 5.—(1) This paragraph applies if an authorised person has reasonable grounds to suspect that—
- (a) the provisions of the Community Regulation or these Regulations are not being, have not been or are not likely to be complied with in respect of any waste; or
  - (b) the shipment, recovery or disposal of any waste cannot be completed in accordance with the notification and movement documents or the contract between the notifier and consignee.
- (2) The authorised person may do any of the following—
- (a) seize that waste;
  - (b) serve a notice on any person who appears to him to be in control of such waste—
    - (i) requiring that person to send the waste to any place specified in the notice; or
    - (ii) prohibiting or restricting the movement of that waste.
- (3) In this paragraph any reference to waste includes—
- (a) any thing that the authorised person has reasonable grounds to suspect is waste; and
  - (b) the container in which the waste or thing is carried.

### **Seizure procedures**

- 6.—(1) If an authorised person seizes any waste under paragraph 5, he must give to the person in control of it a notice (a “seizure notice”)—
- (a) giving the grounds for seizing it; and
  - (b) setting out the rights under this paragraph to make a claim, and the address for the service of the claim.
- (2) If an authorised person is not immediately able to remove any waste seized under paragraph 5, he may mark it in any way he sees fit and serve a notice on the person in control of it, identifying it and prohibiting its removal from the premises until it is collected by, or under the direction of, an authorised person.
- (3) Any person (other than an authorised person or a person acting under his direction) who removes waste referred to in sub-paragraph (2) from the premises is guilty of an offence.
- (4) If it appears that the waste seized is—
- (a) waste from a shipment that cannot be completed as intended, as referred to in Article 22; or
  - (b) an illegal shipment, as referred to in Article 23,
- and it is seized in an area that is not under the jurisdiction of the competent authority with responsibility for take-back pursuant to those Articles, the competent authority that seizes it must store it pending action by the competent authority with such responsibility.
- (5) If the owner of the waste claims that the waste was not liable to seizure he may, within 28 days of the seizure, notify his claim to the competent authority at the address specified in the seizure notice, setting out the grounds in full.
- (6) If a notification of a claim is not received within 28 days, the competent authority must take such steps as it considers appropriate to ensure the recovery or disposal of the waste and for these purposes may serve a notice on the notifier requiring him to recover or dispose of the waste in the manner and within the time period specified in the notice.
- (7) If a notification of a claim is received within 28 days, the competent authority must either return the waste or take proceedings for an order for the confirmation of the notice and the recovery

or disposal of the waste in a magistrates' court (or, in Scotland, the sheriff) and if the court confirms the notice it must order its recovery or disposal.

#### **Requests for assistance from other competent authorities**

7. An authorised person may exercise any powers in this Schedule for the purposes of fulfilling any request from any competent authority to assist it in carrying out its functions under the Community Regulation.

## **PART 2**

### **Her Majesty's Revenue and Customs**

#### **Powers of Her Majesty's Revenue and Customs**

8.—(1) If he is requested to do so by any competent authority in the United Kingdom, an officer of Revenue and Customs may detain any waste that has been brought into the United Kingdom or is to be dispatched from the United Kingdom.

(2) Any thing detained under this paragraph may be detained for no longer than 5 working days and must be dealt with during the period of its detention in such manner as the Commissioners for Her Majesty's Revenue and Customs may direct.

(3) In this regulation "waste" includes—

- (a) any thing that the competent authority has reasonable grounds to suspect is waste; and
- (b) the container in which the waste or thing is carried.

## **PART 3**

### **Take-back etc. of waste**

#### **Shipments of waste that cannot be completed**

9. If a competent authority of dispatch receives notification from another competent authority under Article 22 (take-back when a shipment cannot be completed as intended), it may serve a notice on the notifier of the shipment requiring him to act in accordance with Article 22 within a specified time.

#### **Illegal shipments of waste**

10. If a competent authority of dispatch receives notification from another competent authority under Article 24 (take-back when a shipment is illegal), it may serve a notice on the notifier of the shipment (or if it is not notifiable waste, the person who arranged the shipment) requiring him to act in accordance with Article 24 within a specified time.

#### **Recovery or disposal of illegal shipment**

11. If a competent authority of destination receives notification from another competent authority under Article 24 (take-back when a shipment is illegal), it may serve a notice on the consignee of the shipment requiring him to act in accordance with Article 24(3) within a specified time.

**Status:** This is the original version (as it was originally made).

### **Take-back by the competent authority**

**12.** If a competent authority, acting under the Community Regulation, brings back waste into its area of jurisdiction from outside that area, it may recover or dispose of it as it sees fit at the notifier's expense.