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STATUTORY INSTRUMENTS

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**2009 No. 261**

**The Fluorinated Greenhouse Gases Regulations 2009**

**PART 4**

**Enforcement, offences and penalties**

**Appointment of authorised persons**

**45.**—(1) The enforcing authority may authorise in writing such persons (“authorised persons”) as they consider appropriate to act for the purpose of enforcing these Regulations.

(2) An authorisation under section 108 of the Environment Act 1995(1) (powers of enforcing authorities and persons authorised by them) is an authorisation for the purposes of these Regulations.

**Powers of authorised persons**

**46.**—(1) An authorised person may, on production (if so required) of the authority of that person, exercise any of the powers specified in paragraph (2) for the purpose of enforcing these Regulations.

(2) The powers of an authorised person are—

- (a) at any reasonable time, to enter premises, other than premises used wholly or mainly for residential purposes, which the authorised person has reason to believe it is necessary for the authorised person to enter;
- (b) on entering any premises by virtue of sub-paragraph (a), to take with the authorised person—
  - (i) any other person whose presence appears to the authorised person to be required in connection with the exercise by the authorised person of any power under this regulation, including, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of the duty of the authorised person, 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 or investigation as may in any circumstances be necessary;
- (d) as regards any premises which the authorised person has power to enter, to direct that those premises or any part of them, or anything in them, must be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any examination or investigation under sub-paragraph (c);
- (e) to take such measurements and photographs and make such recordings as the authorised person 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 the authorised person has power to enter;

- (g) in the case of any article or substance found in or on any premises which the authorised person has power to enter, being an article or substance which appears to the authorised person to have caused or to be likely to cause pollution of the environment or harm to human health or to the health of animals or plants, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless that is necessary);
  - (h) in the case of any such article or substance, to take possession of it and detain it for so long as is necessary—
    - (i) to examine it and do to it anything which the authorised person has power to do under sub-paragraph (g),
    - (ii) to ensure that it is not tampered with before the examination by the authorised person is completed, or
    - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations;
  - (i) to require any person whom the authorised person 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 anyone, other than someone nominated by that person to be present and anyone whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of the answers of that person;
  - (j) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which it is necessary for the authorised person to see for the purposes of any 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 the authorised person 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 authorised person to exercise any of the powers conferred on the authorised person by this regulation.
- (3) Where an authorised person proposes to exercise the power conferred by paragraph (2)(g) in the case of an article or substance found in or on any premises, the authorised person must, 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.
- (4) Before exercising the power conferred by paragraph (2)(g) in the case of any article or substance, an authorised person must consult such persons as appear to the authorised person appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which the authorised person proposes to do under the power.
- (5) Where under the power conferred by paragraph (2)(h) an authorised person takes possession of any article or substance found on any premises, the authorised person must leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that the authorised person has taken possession of it under that power; and before taking possession of any such article or substance under that power an authorised person must, if it is practical to do so, take a sample of it and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.
- (6) Nothing in this regulation is taken to compel the production by any person of a document which the person would be entitled to withhold production of on grounds of—
- (a) legal professional privilege on an order for disclosure and inspection in an action in the High Court; or

(b) confidentiality in proceedings in the Court of Session in Scotland.

(7) No person may intentionally prevent any other person from appearing before an authorised person under paragraph (2)(i) or from answering any question to which an authorised person may by virtue of paragraph (2)(i) require an answer.

(8) No answer given by a person in pursuance of a requirement imposed under paragraph (2)(i) is admissible in evidence in England, Wales, Scotland or Northern Ireland against that person in any proceedings.

### **Information notices**

47. An authorised person may, by notice 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 the service of the notice or at such time as is so specified.

### **Enforcement and prohibition notices**

48.—(1) If an authorised person is of the opinion that a person has contravened, is contravening or is likely to contravene—

- (a) Article 3.1 to 3.3, 3.6, 4, 8 or 9, or
- (b) the second paragraph of Article 7.1,

of the 2006 Regulation, the authorised person may serve on that person a notice (“enforcement notice”).

(2) An enforcement notice must—

- (a) state that the authorised person 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.

(3) If an authorised person is of the opinion that the activities of a person in relation to the contravention or likely contravention by that person of Article 3.1, 3.2, 3.3, 3.6, 4, 8 or 9 of the 2006 Regulation are such that they involve an imminent danger of serious pollution of the environment, the authorised person may serve on that person a notice (“prohibition notice”).

(4) A prohibition notice must—

- (a) state that the authorised person is of that opinion;
- (b) specify the danger involved in the activity;
- (c) specify the steps that must be taken to remove the danger; and
- (d) state—
  - (i) the period within which those steps must be taken, or
  - (ii) that the steps must be taken immediately.

(5) Subject to regulation 49(6), the bringing of an appeal under regulation 49 does not suspend the operation of the enforcement notice or the prohibition notice in question.

(6) An authorised person may withdraw at any time an enforcement notice or a prohibition notice.

(7) A person on whom is served an enforcement notice or a prohibition notice must comply with such notice at the expense of that person.

(8) If such a notice is not complied with, the relevant enforcing authority may arrange for it to be complied with at the expense of the person on whom it was served.

(9) In this regulation, “relevant enforcing authority” means the enforcing authority who or which authorised the authorised person who served the enforcement notice or prohibition notice in question.

### **Appeals against enforcement or prohibition notices**

**49.**—(1) A person who is aggrieved by an enforcement notice or a 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(2) applies to the proceedings.

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

(4) An appeal may be brought not later than 28 days after the date on which the enforcement notice or the prohibition notice in question is served.

(5) An enforcement notice or prohibition notice must state—

- (a) that the person on whom the notice in question is served has the right of appeal to a magistrates’ court or the sheriff; and
- (b) the period in which the appeal may be brought.

(6) The court may suspend an enforcement notice or prohibition notice pending an appeal.

### **Proceedings before a civil court**

**50.**—(1) If the enforcing authority is of the opinion that proceedings against a person for an offence under regulation 51(1)(b) would afford an ineffectual remedy against that person, the enforcing authority may take civil proceedings against that person for the purpose of seeking such remedy as the enforcing authority believes is appropriate in the circumstances.

(2) Civil proceedings under paragraph (1) may be taken—

- (a) in the County Court or the High Court; or
- (b) in Scotland, before the sheriff.

### **Miscellaneous offences**

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

- (a) fail to comply with the requirements of a notice served on the person under regulation 47;
- (b) fail to comply with an enforcement notice or a prohibition notice;
- (c) fail to comply with a direction given, or a requirement imposed, under regulation 46(2);
- (d) contravene, or cause or permit another person to contravene, regulation 46(7);
- (e) intentionally obstruct an authorised person in the exercise or performance of the powers or duties of that authorised person;
- (f) furnish to an authorised person any information which the person knows to be false or misleading; or
- (g) pretend to be an authorised person.

(2) It is an offence for a person to—

- (a) fail to comply with regulation 55(4); or

(b) cause or permit another person to fail to comply with that regulation.

(3) It is an offence for a person knowingly or recklessly to furnish Article 6.4 information which is false or misleading in any material particular.

(4) In paragraph (3), “Article 6.4 information” means such information as the Secretary of State may reasonably request to enable the Secretary of State to acquire emission data for the purposes of Article 6.4 of the 2006 Regulation.

### **Bodies corporate, partnerships and unincorporated associations - offences**

**52.**—(1) If an offence committed by a body corporate is shown—

- (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 the 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 functions of management of that member as if the member were a director of the body.

(3) If an offence committed by a partnership is shown—

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

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) For the purpose of proceedings for an offence alleged to have been committed by a partnership, section 70 of the Criminal Procedure (Scotland) Act 1995(3) applies as it applies in relation to a body corporate.

(5) Subject to paragraph (8), proceedings for an offence alleged to have been committed by an unincorporated association must be brought in the name of the association and not in the name of any of its members.

(6) For the purpose of such proceedings—

- (a) rules of court relating to the service of documents have effect as if the association were a body corporate; and
- (b) the following provisions apply as they apply in relation to a body corporate—
  - (i) section 33 of the Criminal Justice Act 1925(4) and Schedule 3 to the Magistrates’ Courts Act 1980(5),
  - (ii) section 70 of the Criminal Procedure (Scotland) Act 1995, and

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(3) 1995 c. 46. Section 70 was amended by section 28 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (2007 asp 6).

(4) 1925 c. 86. Subsections (1) and (2) of section 33 were repealed by the Magistrates’ Courts Act 1952 (c. 55), section 132 and Schedule 6; subsection (3) was amended by the Courts Act 1971 (c. 23), section 56(1) and Schedule 8, part II, paragraph 19; subsection (4) was amended by the Courts Act 2003 (c. 39), section 109(1) and (3), Schedule 8, paragraph 71 and Schedule 10, and by the Magistrates’ Courts Act 1980 (c. 43), section 154 and Schedule 7, paragraph 5; subsection (5) was repealed by the Magistrates’ Court Act 1952, section 132 and Schedule 6.

(5) 1980 c. 43. Sub-paragraph 2(a) was amended by the Criminal Procedure and Investigations Act 1996 (c. 25), section 47, Schedule 1, paragraph 13, and was repealed by the Criminal Justice Act 2003 (c. 44), sections 41 and 332, Schedule 3, part 2, paragraph 51, sub-paragraphs (1), (13)(a), and Schedule 37, part 4 (with effect from a date to be appointed); paragraph 5 was repealed by the Criminal Justice Act 1991 (c. 53), sections 25(2) and 101(2) and Schedule 13; paragraph 6 was amended by the Criminal Justice Act 2003, section 41, Schedule 3, part 2, paragraph 51, sub-paragraphs (1) and (13)(b) (with effect from a date to be appointed).

(iii) section 18 of the Criminal Justice Act (Northern Ireland) 1945<sup>(6)</sup> and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981<sup>(7)</sup>.

(7) A fine imposed on an unincorporated association on its conviction for an offence must be paid out of the funds of the association.

(8) If an offence committed by an unincorporated association, other than a partnership, is shown—

(a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or

(b) to be attributable to any neglect on the part of such an officer or member,

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

(9) In this regulation—

(a) “offence” means an offence under these Regulations;

(b) “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; and

(c) “partner” includes a person purporting to act as a partner.

## Penalties

**53.** A person who commits an offence under these Regulations is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine.

## Fixed penalties

**54.—**(1) If an authorised person has reason to believe that a person has committed an offence under regulation 5 in relation to—

(a) refrigeration equipment,

(b) air conditioning, or

(c) heat pump equipment,

kept on premises used only as a private dwelling house, the authorised person may give that person a notice offering that person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

(2) Where a person is given a fixed penalty notice under this regulation in respect of an offence—

(a) no proceedings may be instituted for that offence before the expiry of 28 days following the date of the fixed penalty notice; and

(b) the person may not be convicted of that offence if the person pays the fixed penalty before the expiry of that period.

(3) A fixed penalty notice must contain such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(4) A fixed penalty notice must state—

<sup>(6)</sup> 1945 c. 15 (N.I.).

<sup>(7)</sup> S.I. 1981/1675 (N.I. 26).

- (a) the period during which, by virtue of paragraph (2), proceedings cannot be taken for the offence;
  - (b) the amount of the fixed penalty;
  - (c) the name of the person to whom and the address at which the fixed penalty may be paid.
- (5) Payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of penalty.
- (6) Where a letter is sent in accordance with paragraph 5 payment is deemed to be made at the time at which that letter would be delivered in the ordinary course of post.
- (7) A fixed penalty notice must be in the form set out in Schedule 3, or in a substantially similar form.
- (8) The amount of fixed penalty payable in pursuance of a fixed penalty notice is £100 which must be paid to the relevant enforcing authority.
- (9) In any proceedings, a certificate which—
- (a) purports to be signed by or on behalf of the chief finance officer of the relevant enforcing authority, and
  - (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,
- is evidence of the facts stated.
- (10) In this regulation—
- (a) “fixed penalty notice” means a notice given under paragraph (1);
  - (b) “relevant enforcing authority” means the enforcing authority that authorised the authorised person who served the fixed penalty notice in question.

### **Powers of the Secretary of State**

**55.**—(1) Paragraphs (2) and (3) apply where, in contravention of Article 9 of the 2006 Regulation, a person has imported into the United Kingdom from outside the customs territory of the Community a product or equipment containing, or whose functioning relies upon, fluorinated greenhouse gases.

- (2) The Secretary of State may require the person—
- (a) to dispose of the product or equipment without causing pollution of the environment or harm to human health or the health of animals or plants;
  - (b) otherwise to render it harmless; or
  - (c) to remove it from—
    - (i) the United Kingdom, or
    - (ii) an offshore installation.
- (3) The Scottish Ministers may require the person to remove the product or equipment from a Scottish offshore installation.
- (4) The person must comply with a requirement made under paragraph (2) or (3).

### **Enforcement**

**56.**—(1) Subject to paragraphs (2), (3) and (4), the relevant authority must enforce these Regulations.

(2) In relation to cases of a particular description, or a particular case, the Secretary of State as regards England, the Welsh Ministers as regards Wales, and the Scottish Ministers as regards

Scotland, may direct that the duty in paragraph (1) imposed on a relevant authority shall be discharged by the Secretary of State or them, as the case may be, and not by the relevant authority.

(3) The Secretary of State must enforce these Regulations in relation to offshore installations.

(4) The Scottish Ministers must enforce these Regulations in relation to Scottish offshore installations.

(5) In this regulation, “relevant authority” means the Agency, the local authority or the port health authority.