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STATUTORY INSTRUMENTS

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**2015 No. 821**

**The Nagoya Protocol (Compliance) Regulations 2015**

**PART 5**

Offences and penalties

**Offences**

**13.** It is an offence to fail to comply with—

- (a) a compliance notice;
- (b) a stop notice within the time limit specified in the notice;
- (c) Article 4(6) of the EU Regulation (obligation to keep information for 20 years after utilisation).

**Obstruction of an inspector**

**14.** Where an inspector exercises a power under these Regulations, it is an offence for any person to—

- (a) intentionally obstruct the inspector;
- (b) without reasonable excuse, fail to give the inspector any information or assistance that the inspector may reasonably require;
- (c) knowingly give false or misleading information to the inspector;
- (d) without reasonable excuse, fail to produce a record or document when reasonably required to do so by the inspector.

**Offences by bodies corporate, partnerships and unincorporated associations**

**15.—**(1) Proceedings for an offence under these Regulations alleged to have been committed by a partnership or unincorporated association may be brought against the partnership or association in the name of the partnership or association.

(2) For the purposes of such proceedings—

- (a) rules of court relating to the service of documents have effect as if the partnership or unincorporated 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 (procedure on charge of offence against corporation) and Schedule 3 to the Magistrates' Courts Act 1980 (corporations); and
  - (ii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (procedure on charge) and Schedule 4 to the Magistrates Courts' (Northern Ireland) Order 1981 (corporations).

(3) A fine imposed on a partnership or unincorporated association on its conviction of an offence under these Regulations is to be paid out of the funds of the partnership or association.

(4) If an offence under these Regulations committed 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 the negligence of an officer,

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

(5) If an offence under these Regulations committed by a partnership is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to the negligence of a partner,

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

(6) If an offence under these Regulations committed by an unincorporated association is proved—

- (a) to have been committed with the consent or connivance of an officer of the association or member of its governing body, or
- (b) to be attributable to the negligence of that 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.

(7) In paragraphs (4), (5) and (6), any reference to an officer, partner or member, as the case may be, includes any person purporting to act in such a capacity.

## Penalties

**16.—**(1) A person guilty of an offence under paragraph (a) or (b) of regulation 13 is liable—

- (a) on summary conviction to a fine not exceeding £5,000 or to a term of imprisonment not exceeding three months, or to both;
- (b) on conviction on indictment, to a fine or to a term of imprisonment not exceeding two years, or to both.

(2) A person guilty of an offence under paragraph (c) of regulation 13<sup>F1</sup>, or regulation 14,] is liable on summary conviction to a fine not exceeding £5,000.

(3) For the purposes of paragraph (1), the reference to £5,000 in relation to a fine in Northern Ireland shall be read as meaning the statutory maximum.

(4) For the purposes of paragraph (2), the reference to £5,000 in relation to a fine in Scotland or Northern Ireland shall be read as meaning level 5 on the standard scale.

(5) Notwithstanding section 127 of the Magistrates Court Act 1980<sup>M5</sup> (limitation of time) or article 19 of the Magistrates Court (Northern Ireland) Order 1981<sup>M6</sup> (time within which complaint charging offence must be made to give jurisdiction), if the relevant condition in paragraph (6) is met in respect of an offence under regulation 13—

- (a) a magistrates' court in England and Wales, may try an information;
- (b) a magistrates' court in Northern Ireland, may try a complaint.

(6) The condition is that, within three years of the date of the offence or within one year from the discovery of the offence by the prosecutor, whichever is earlier—

- (a) in the case of England and Wales, the information is laid;
- (b) in the case of Northern Ireland, the complaint is made.

(7) In Scotland, summary proceedings for an offence under regulation 13 may be commenced within three years of the date of the offence or within one year of the discovery of the offence by the prosecutor, whichever is earlier.

(8) For the purposes of paragraph (7), section 136(3) of the Criminal Procedure (Scotland) Act 1995<sup>M7</sup> will apply as it applies for the purposes of that section.

(9) For the purposes of this regulation—

- (a) a certificate signed by or on behalf of the prosecutor and stating the date on which the prosecutor first knew of evidence sufficient to justify the proceedings is conclusive evidence of that fact; and
- (b) a certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved.

**F1** Words in reg. 16(2) inserted (11.10.2015) by [The Nagoya Protocol \(Compliance\) \(Amendment\) Regulations 2015 \(S.I. 2015/1691\)](#), [regs. 1, 2](#)

**Marginal Citations**

**M5** 1980 c. 43.

**M6** S.I. 1981/1675.

**M7** 1995 c. 46.

**Recovery of expenses of enforcement**

**17.—(1)** This regulation applies where a court convicts a person of an offence under regulation 13.

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted to reimburse the Secretary of State for any expenditure the Secretary of State or any inspector has reasonably incurred in investigating the offence, including expenditure incurred in the exercise of any power conferred by regulation 10 or 11.

**Changes to legislation:**

There are currently no known outstanding effects for the The Nagoya Protocol (Compliance) Regulations 2015, PART 5.