
STATUTORY INSTRUMENTS

2009 No. 2048

The Port Security Regulations 2009

PART 6

Enforcement

Enforcement notices

26.—(1) Where a transport security inspector is of the opinion that a person has failed to comply with a requirement of regulation 6, 8, 10(2), 13(1)(b) or 13(2), 17(2), 21(1) or (2), paragraphs 1(2), 2, 3 or 4 of Schedule 1, or paragraph 3 of Schedule 2, the transport security inspector may serve on that person a notice (referred to in this Part as an “enforcement notice”).

(2) An enforcement notice must state the matters which appear to the transport security inspector to constitute a failure to comply with the requirement in question.

(3) An enforcement notice must specify the steps which the transport security inspector requires to be taken, or the activity which the transport security inspector requires to be ceased in order to achieve compliance with the requirement in question within the time specified in the enforcement notice.

(4) An enforcement notice may be framed so as to give the person on whom it is served a choice of different ways of complying with the requirements set out in the notice.

(5) An enforcement notice must specify the date on which it is to take effect, and takes effect on that date.

(6) An enforcement notice must specify the period by the end of which the steps specified in that notice must be taken or the activity specified in that notice must have ceased, and may specify different periods for different steps or activities.

(7) Where different periods apply to different steps or activities, references in these Regulations to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period by the end of which the step is required to have been taken or the activity is required to have ceased.

(8) An enforcement notice requiring a person not to cause or permit anything to be done shall be construed as requiring that person to take all such steps as in any particular circumstances are practicable and necessary to prevent that thing from being done.

Objections to enforcement notices

27.—(1) A person on whom an enforcement notice is served, (“the objector”) may require the Secretary of State to consider an objection to that enforcement notice by serving on the Secretary of State a notice in writing within 7 days of the date on which the enforcement notice was served.

(2) The only grounds of objection to an enforcement notice are—

(a) that the steps required by the notice to be taken have been complied with;

- (b) that the matters stated in the enforcement notice in accordance with regulation 26(2) do not constitute a failure to comply with a requirement specified in regulation 26(1);
- (c) that any requirement of the notice—
 - (i) is unnecessary for complying with the requirements specified in regulation 26(1) and should be dispensed with; or
 - (ii) is excessively onerous or inconvenient and should be modified in a manner specified in the notice of objection.
- (3) A notice under paragraph (1) must be accompanied by a statement in writing—
 - (a) specifying the grounds on which the objector is objecting to the enforcement notice; and
 - (b) providing such further information as may be appropriate.
- (4) Where the objector serves a notice under paragraph (1), the Secretary of State must consider the grounds of the objection and, if so required by the objector, must afford to that objector an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose, and must then serve on the objector a notice in writing either—
 - (a) confirming the enforcement notice as originally served; or
 - (b) confirming the enforcement notice subject to one or more modifications specified in the notice under this paragraph; or
 - (c) cancelling the enforcement notice.
- (5) An enforcement notice to which an objection has been made under paragraph (1) does not take effect until it has been confirmed, with or without modification, by a notice under paragraph (4).
- (6) An enforcement notice served on any person may be—
 - (a) revoked by a notice, or
 - (b) varied by a further enforcement notice,
 served on that person by a transport security inspector.

Offences relating to enforcement notices

- 28.**—(1) Any person who, without reasonable excuse, fails to comply with an enforcement notice served on that person is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a fine.
- (2) Where a person is convicted of an offence under paragraph (1) and the failure in respect of which that person was convicted is continued without reasonable excuse after the conviction, that person is guilty of a further offence and liable on summary conviction to a fine not exceeding £100 for each day on which the failure continues.

Offences relating to transport security inspectors

- 29.**—(1) Any person who—
- (a) intentionally obstructs a transport security inspector acting in the exercise of a power conferred upon that inspector by these Regulations, or
 - (b) falsely pretends to be a transport security inspector,
- commits an offence.
- (2) A person guilty of an offence under paragraph (1)(a) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or

- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years.
- (3) A person guilty of an offence under paragraph (1)(b) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Any person who—
 - (a) without reasonable excuse, fails to comply with a requirement imposed on them under regulation 22(2)(d), or
 - (b) in furnishing any information so required makes a statement which that person knows to be false in a material particular, or recklessly makes a statement which is false in a material particular,commits an offence.
- (5) A person guilty of an offence under paragraph (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 to imprisonment for a term not exceeding two years.

Offences in relation to prohibited articles

- 30.**—(1) It is an offence for a person, without lawful authority or reasonable excuse, to have with them when attempting to enter or when in a controlled building or restricted area, any prohibited article.
- (2) A person guilty of an offence under this regulation is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months; or
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years.

Offence of making a false statement in relation to baggage, cargo or stores

- 31.**—(1) It is an offence for any person without lawful authority or reasonable excuse to make a statement which that person knows to be false in a material particular, or recklessly make a statement which is false in a material particular, in answer to a question which—
- (a) relates to any baggage, cargo or stores, whether or not belonging to that person, that is intended for carriage by sea—
 - (i) by a United Kingdom ship; or
 - (ii) by any other ship to or from the United Kingdom; and
 - (b) is put to that person for purposes to which these Regulations apply by any of the persons listed in paragraph (2).
- (2) The persons referred to in paragraph (1)(b) are—
- (a) a constable,
 - (b) an officer of the UK Border Agency, an executive agency of the Home Office,
 - (c) a port security officer,
 - (d) a port facility security officer,
 - (e) a directed party,
 - (f) a security manager,

or a person acting on behalf of a port security officer, port facility security officer, directed party or security manager.

(3) A person guilty of an offence under this regulation is liable on summary conviction, to a fine not exceeding level 5 on the standard scale.

False statements in connection with identity documents

32.—(1) A person commits an offence if, without lawful authority or reasonable excuse—

- (a) for the purposes of, or in connection with, an application (whether or not made by that person), for the issue of an identity document to which this regulation applies, or
- (b) in connection with the continued holding (whether or not by that person), of any such document which has already been issued,

that person makes to any of the people specified in paragraph (3), a statement which that person knows to be false in a material particular, or recklessly makes a statement which is false in a material particular.

(2) Paragraph (1) applies to any identity document which is to be or has been issued by any of the people listed in paragraph (3) in accordance with arrangements made in the port security plan for the control of access to a restricted area or controlled building.

(3) The people referred to in paragraph (1) are—

- (a) a constable,
- (b) a port security officer,
- (c) a port facility security officer,
- (d) a security manager,

or a person acting on behalf of that port security officer, port facility security officer, or security manager.

(4) A person guilty of an offence under this regulation is liable on summary conviction, to a fine not exceeding level 5 on the standard scale.

Interference with security measures

33.—(1) A person who intentionally interferes with security measures required by a port security plan commits an offence.

(2) A person guilty of an offence under this regulation is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years.

Unauthorised presence in a controlled building

34.—(1) Subject to paragraph (2), a person who contravenes regulation 24(1) or (2) without lawful authority or reasonable excuse is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person who contravenes regulation 24(1) or (2) is not guilty of an offence unless it is proved that, at the material time, notices stating that the building concerned was a controlled building were posted so as to be reasonably seen and read by a person entering the controlled building.

Confidentiality of information

35.—(1) Subject to paragraph (2) a person must not disclose any information which has been obtained by, or furnished to, that person under or for the purposes of these Regulations unless the disclosure is made with lawful justification.

(2) For the purposes of paragraph (1), a disclosure of information is made with lawful justification only if, and to the extent that—

- (a) the disclosure is made for the purposes of, and is necessary for, the performance of any function under these Regulations;
- (b) the disclosure is made with the consent of the person to whom, or to whose business, property or other assets, the information relates; or
- (c) the disclosure is made for the purposes of any proceedings, whether criminal or civil.

(3) Information coming into the possession of a person must not be used by that person for any purpose other than the purposes of these Regulations.

(4) A person that knowingly or recklessly discloses information in contravention of paragraph (1) or uses information in contravention of paragraph (3) is guilty of an offence and is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years.

Defence of due diligence

36.—(1) Subject to the following provisions of this regulation, in any proceedings against any person for an offence under these Regulations it is a defence for that person to show that they took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person for such an offence the defence provided in paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) the act or default of another, or
- (b) reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, within a period ending 7 clear days before the commencement of the hearing of the proceedings (or in Scotland, the trial diet), they have served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph is one containing all such information identifying, or assisting in the identification of, the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) A person shall not be entitled to rely on the defence provided in paragraph (1) by reason of their reliance on information supplied by another, unless they can show that it was reasonable in all the circumstances to have relied on the information, having regard in particular—

- (a) to the steps which they took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether they had any reason to disbelieve the information.

Offences by bodies corporate

37.—(1) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) any director, manager, secretary or other similar officer of the body corporate, or
(b) any person who was purporting to act in any such capacity,
that person, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) For the purposes of paragraph (1) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Where an offence under these Regulations is committed in Scotland by a Scottish partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

Designation of Secretary of State as focal point for port security

^{F1}38.

Textual Amendments
F1 [Reg. 38](#) omitted (31.12.2020) by virtue of [The Ship and Port Security \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/308\)](#), regs. 1(2), **19(5)**; 2020 c. 1, Sch. 5 para. 1(1)

[^{F2}Review

39.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review, the Secretary of State must, so far as is reasonable, have regard to how the Port Security Directive (which is implemented by means of these Regulations) is implemented in other European Union Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before 29th November 2018.

(5) Reports under this regulation must afterwards be published at intervals not exceeding five years.]

Textual Amendments
F2 [Reg. 39](#) inserted (29.11.2013) by [The Port Security \(Amendment\) Regulations 2013 \(S.I. 2013/2815\)](#), regs. 1, **10**

Changes to legislation:

There are currently no known outstanding effects for the The Port Security Regulations 2009, PART 6.