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STATUTORY INSTRUMENTS

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**2017 No. 1200**

**The Control of Mercury (Enforcement) Regulations 2017**

**PART 3**

**Enforcement specific to Northern Ireland**

**Application of this Part and interpretation**

**19.**—(1) This Part applies to enforcement by DAERA in Northern Ireland.

(2) In this Part, “appeals commission” means the planning appeals commission which continues to be established in accordance with section 203 of the Planning Act (Northern Ireland) 2011<sup>(1)</sup>.

**Enforcement notices**

**20.**—(1) DAERA may give a person an enforcement notice if condition A or B is met.

(2) An enforcement notice is a notice requiring the person to take action (including to stop doing any thing).

(3) Condition A is that DAERA is of the opinion that the person has failed or is failing to comply with a relevant provision or provisions.

(4) Condition B is that DAERA is of the opinion that the person is likely to fail to comply with a relevant provision or provisions.

(5) The action which DAERA may require the person to take is any one or more of the following—

- (a) action to ensure compliance with the relevant provision or provisions in question;
- (b) action to remediate any environmental damage attributable to the non-compliance in question;
- (c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.

(6) An enforcement notice must state—

- (a) the matters constituting the failure or likelihood of failure,
- (b) the action which must be taken under paragraph (5),
- (c) the period (the “compliance period”) within which the action must be taken,
- (d) that there is a right to appeal against the enforcement notice and how that right may be exercised, and
- (e) the consequences of failing to comply with the enforcement notice (see regulation 21 which relates to action to ensure compliance).

(7) DAERA may withdraw an enforcement notice by informing the person to whom it was given in writing.

(8) A person to whom an enforcement notice is given may appeal to the appeals commission against it on one or more of the following grounds—

- (a) that the decision to give the enforcement notice was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the nature of what is required by the enforcement notice is unreasonable;
- (d) that the decision was unreasonable for any other reason;
- (e) any other ground.

### **Action by DAERA to ensure compliance with enforcement notices**

**21.**—(1) This regulation applies where—

- (a) DAERA has given an enforcement notice to a person, and
- (b) DAERA is of the opinion that the person has not carried out one or more of the actions referred to in the enforcement notice within the compliance period (see regulation 20(6)(c)).

(2) DAERA may take any of the following action (whether the same as or different to any action referred to in the enforcement notice)—

- (a) action to ensure compliance with the relevant provision or provisions in question;
- (b) action to remediate any environmental damage attributable to the non-compliance in question;
- (c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.

(3) If DAERA proposes that any of the action under paragraph (2) be taken on any premises, Articles 72, 73, 73A and 74 of, and Schedule 4 to, the WCLO 1997 (which relate to powers of DAERA and persons authorised by it and related matters) apply but as if—

- (a) in Article 72 there were a reference to the purpose of taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of purposes in sub-paragraph (1);
- (b) in Article 72 there were a reference to taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of powers in sub-paragraph (2);
- (c) in paragraph 5 of Schedule 4 the reference in the words before sub-paragraph (1)(a) to any power conferred by Article 72(2)(a) or (b) or (3) included a reference to the power conferred under sub-paragraph (b) above.

### **Recovery of enforcement costs**

**22.**—(1) DAERA may give a person a costs recovery notice if condition A or B is met.

(2) A costs recovery notice is a notice requiring the person to pay DAERA's costs.

(3) Condition A is that DAERA has given the person an enforcement notice.

(4) Condition B is that DAERA has taken action to ensure compliance with an enforcement notice under regulation 21.

(5) In paragraph (2), the reference to costs is a reference—

- (a) if condition A is met, to any costs relating to preparing and giving the enforcement notice, and
- (b) if condition B is met, to any costs relating to the action taken,

and includes a reference to the costs of any related investigation or expert advice (including legal advice).

- (6) The costs must be paid by the person within the period (the “payment period”)—
  - (a) of 56 days beginning with the day on which the costs recovery notice is given, where the costs recovery notice has not been appealed under paragraph (10);
  - (b) of 28 days beginning with the day on which the appeal has been determined or withdrawn, where the costs recovery notice has been appealed under paragraph (10).
- (7) The costs recovery notice must state—
  - (a) the amount of the costs which must be paid,
  - (b) in general terms, how those costs have arisen,
  - (c) the payment period,
  - (d) how payment must be made,
  - (e) the consequences of failing to make payment within the payment period (see paragraph (8)), and
  - (f) that there is a right to appeal against the costs recovery notice and how that right may be exercised.
- (8) Following the payment period, DAERA may recover the costs referred to in the costs recovery notice and any related interest under regulation 23 as a civil debt.
- (9) DAERA may withdraw a costs recovery notice given by it by informing the person to whom it was given in writing.
- (10) A person to whom a costs recovery notice is given may appeal to the appeals commission against it on one or more of the following grounds—
  - (a) that the decision to give the costs recovery notice was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the amount of the costs is unreasonable;
  - (d) that the decision was unreasonable for any other reason;
  - (e) any other ground.

### **Late payment interest**

**23.**—(1) If a person fails to pay the costs referred to in a costs recovery notice in full within the payment period, interest is payable on the outstanding amount.

(2) Interest falls to be paid at a rate of 8% per annum calculated on a daily basis for the period beginning with the day after the last day of the payment period and ending on the day payment is made or recovered.

(3) The total amount of interest payable is not to exceed the amount of costs in question.

### **Further provision about appeals**

**24.**—(1) A person (the “appellant”) who wishes to appeal to the appeals commission under regulation 20(8) or 22(10) must—

- (a) give the appeals commission written notice of the appeal (the “notice of appeal”),
- (b) pay the relevant fee (see paragraph (4)), and
- (c) as soon as is reasonably practicable, give DAERA a copy of the notice of appeal.

(2) A notice of appeal must include a statement of the grounds of the appeal.

(3) A notice of appeal must be given before the expiry of the period of 28 days beginning with the day on which the enforcement notice was given.

(4) The relevant fee is the amount specified in regulation 9(1) of the Planning Fees (Deemed Planning Applications and Appeals) Regulations (Northern Ireland) 2015(2).

(5) The appeals commission may determine that an appeal is to be determined solely by reference to written representations.

(6) The appellant and DAERA may make written representations to the appeals commission about its determination under paragraph (5).

(7) The appeals Commission must take any such representations into account in its determination under paragraph (5).

(8) A costs recovery notice which is the subject of an appeal is suspended pending the appeals commission's decision on the appeal.

(9) An enforcement notice which is the subject of an appeal is not suspended pending the appeals commission's decision on the appeal.

(10) The appellant may withdraw a notice of appeal by—

- (a) giving written notice to the appeals commission stating that the appeal is withdrawn, and
- (b) as soon as is reasonably practicable, notifying DAERA.

(11) The appeals commission may (in addition to its power to confirm, reverse or vary a determination under section 204 of the Planning Act (Northern Ireland) 2011)—

- (a) take any action DAERA is empowered to take in relation to the failure referred to in the notice;
- (b) remit any decision relating to the notice to DAERA.

(12) A determination of the appeals commission is final.