

---

STATUTORY INSTRUMENTS

---

**2017 No. 1200**

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

**PART 7**

**Criminal enforcement**

**Offences in respect of laws relating to mercury, enforcement notices and information**

- 41.**—(1) A person commits an offence if the person fails to comply with a relevant provision.
- (2) A person commits an offence if the person fails to comply with an enforcement notice.
- (3) A person commits an offence if the person fails to comply with an information notice.
- (4) A person commits an offence if the person gives an enforcing authority information which—
- (a) the person knows is false or misleading, and
  - (b) is given in connection with the performance of any function conferred on the enforcing authority under or by virtue of these Regulations.
- (5) A person commits an offence if the person fails to produce a document or record for an enforcing authority performing a function pursuant to regulation 6.

**Limitation of regulation 41 offences in England and Wales only**

- 42.**—(1) Proceedings against a person for an offence under regulation 41(1) must not be started if—
- (a) a civil penalty notice has been given to the person under regulation 10(3) for the failure, and
  - (b) the civil penalty notice has not been withdrawn.
- (2) Proceedings against a person for an offence under regulation 41(2) or (3) must not be started if—
- (a) a civil penalty notice has been given to the person under regulation 10(4) for the failure, and
  - (b) the civil penalty notice has not been withdrawn.
- (3) Proceedings against a person for an offence under regulation 41(1) or (2) must not be started if civil proceedings have been started against the person under regulation 18 in respect of the failure.

**Offences relating to customs officials**

- 43.**—(1) A person commits an offence if the person intentionally obstructs a customs official performing a function under regulation 33(1).
- (2) A person commits an offence if the person fails, without reasonable excuse, to give a customs official performing a function under regulation 33(1) information which the customs official requires.

(3) A person commits an offence if the person gives a customs official performing a function under regulation 33(1) information knowing it to be false or misleading.

(4) A person commits an offence if the person fails to produce a document or record for a customs official performing a function under regulation 33(1) when required to do so.

#### **Offences relating to inspections of offshore installations**

44.—(1) A person commits an offence if the person intentionally obstructs an appointed person performing a function under regulation 39.

(2) A person commits an offence if the person fails, without reasonable excuse, to give an appointed person performing a function under regulation 39 information which the appointed person requires.

(3) A person commits an offence if the person gives an appointed person performing a function under regulation 39 information knowing it to be false or misleading.

(4) A person commits an offence if the person fails to produce a document or record for an appointed person performing a function under regulation 39 when required to do so.

#### **Proceedings: partnerships etc.**

45.—(1) Proceedings for an offence under this Part alleged to have been committed by a partnership must be started in the name of the partnership (and not in that of any of its members).

(2) Proceedings for an offence under this Part alleged to have been committed by an unincorporated association must be started in the name of the association (and not in that of any of its members).

(3) A fine imposed on a partnership (other than a Scottish partnership) on its conviction of an offence is to be paid out of the funds of the partnership.

(4) A fine imposed on an unincorporated association on its conviction of an offence is to be paid out of the funds of the association.

(5) Rules of court relating to the service of documents have effect as if a partnership or unincorporated association were a body corporate.

(6) In proceedings for an offence under this Part started against a partnership or an unincorporated association in England and Wales, section 33 of the Criminal Justice Act 1925(1) and Schedule 3 to the Magistrates' Courts Act 1980(2) apply as they do in relation to a body corporate.

(7) In proceedings for an offence under this Part started against a partnership or an unincorporated association in Northern Ireland, section 18 of the Criminal Justice (Northern Ireland) Act 1945(3) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981(4) apply as they do in relation to a body corporate.

#### **Offences by bodies corporate etc.**

46.—(1) If an offence under this Part committed by a body corporate is shown to be one or both of the following—

- 
- (1) 1925 c.86. Relevant amending enactments are Schedule 6 to the Magistrates' Court Act 1952 (c.55) and paragraph 19 of Schedule 8 to the Courts Act 1971 (c.23).
- (2) 1980 c.43. Relevant amending enactments are sections 25 and 101 of, and Schedule 13 to, the Criminal Justice Act 1991 and paragraph 51 of Schedule 3 to, and Schedule 37 to, the Criminal Justice Act 2003 (c.44).
- (3) 1945 c.15 (N.I. 1). Relevant amending enactments are paragraph 1 of Schedule 12 to the Justice (Northern Ireland) Act 2002 (c.26) and S.I. 1972/538 (N.I. 1).
- (4) S.I. 1981/1675 (N.I. 26).

(a) to have been committed with the consent or the connivance of an officer of the body corporate;

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

the officer (as well as the body corporate) is guilty of the offence and is 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 their functions of management as if the member was a director of the body.

(3) If an offence under this Part committed by a partnership is shown to be one or both of the following—

(a) committed with the consent or the connivance of an officer;

(b) attributable to any neglect on the part of an officer,

that officer (as well as the partnership) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(4) If an offence under this Part committed by an unincorporated association (other than a partnership) is shown to be one or both of the following—

(a) committed with the consent or the connivance of an officer of the association;

(b) attributable to any neglect on the part of an officer,

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

(5) “Officer” means—

(a) in relation to a body corporate—

(i) a director, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity, or

(ii) an individual who is a controller of the body, or a person purporting to act as a controller;

(b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such a capacity;

(c) in relation to a partnership, means a partner, and any manager, secretary or similar officer of the partnership, or a person purporting to act in such a capacity.

### **Offences: penalties**

**47.** A person who commits an offence under this Part is liable—

(a) on summary conviction in England and Wales, to a fine or to imprisonment for a term not exceeding three months or to both;

(b) on summary conviction in Northern Ireland, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both;

(c) on summary conviction in Scotland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both;

(d) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.