
DRAFT STATUTORY INSTRUMENTS

2004 No.

The Environmental Information Regulations 2004

PART 5

Enforcement and appeals, offences, amendment and revocation

Enforcement and appeal provisions

18.—(1) The enforcement and appeals provisions of the Act shall apply for the purposes of these Regulations as they apply for the purposes of the Act but with the modifications specified in this regulation.

(2) In this regulation, “the enforcement and appeals provisions of the Act” means—

- (a) Part IV of the Act (enforcement), including Schedule 3 (powers of entry and inspection) which has effect by virtue of section 55 of the Act; and
- (b) Part V of the Act (appeals).

(3) Part IV of the Act shall not apply in any case where a certificate has been issued in accordance with regulation 15(1).

(4) For the purposes of the application of the enforcement and appeals provisions of the Act—

- (a) for any reference to—
 - (i) “this Act” there shall be substituted a reference to “these Regulations”; and
 - (ii) “Part I” there shall be substituted a reference to “Parts 2 and 3 of these Regulations”;
- (b) any reference to a public authority is a reference to a public authority within the meaning of these Regulations;
- (c) for any reference to the code of practice under section 45 of the Act (issue of a code of practice by the Secretary of State) there shall be substituted a reference to any code of practice issued under regulation 16(1);
- (d) in section 50(4) of the Act (contents of decision notice)—
 - (i) in paragraph (a) for the reference to “section 1(1)” there shall be substituted a reference to “regulation 5(1)”; and
 - (ii) in paragraph (b) for the references to “sections 11 and 17” there shall be substituted references to “regulations 6, 11 or 14”;
- (e) in section 56(1) of the Act (no action against public authority) for the words “This Act does not confer” there shall be substituted the words “These Regulations do not confer”;
- (f) in section 57(3)(a) of the Act (appeal against notices served under Part IV) for the reference to “section 66” of the Act (decisions relating to certain transferred public records) there shall be substituted a reference to “regulations 17(2) to (5)”;
- (g) in paragraph 1 of Schedule 3 to the Act (issue of warrants) for the reference to “section 77” (offence of altering etc. records with intent to prevent disclosure) there shall be substituted a reference to “regulation 19”; and

(h) in paragraph 8 of Schedule 3 to the Act (matters exempt from inspection and seizure) for the reference to “information which is exempt information by virtue of section 23(1) or 24(1)” (bodies and information relating to national security) there shall be substituted a reference to “information whose disclosure would adversely affect national security”.

(5) In section 50(4)(a) of the Act (contents of decision notice) the reference to confirmation or denial applies to a response given by a public authority under regulation 12(6) or regulation 13(5).

(6) Section 53 of the Act (exception from duty to comply with decision notice or enforcement notice) applies to a decision notice or enforcement notice served under Part IV of the Act as applied to these Regulations on any of the public authorities referred to in section 53(1)(a); and in section 53(7) for the reference to “exempt information” there shall be substituted a reference to “information which may be refused under these Regulations”.

(7) Section 60 of the Act (appeals against national security certificate) shall apply with the following modifications—

- (a) for the reference to a certificate under section 24(3) of the Act (national security) there shall be substituted a reference to a certificate issued in accordance with regulation 15(1);
- (b) subsection (2) shall be omitted; and
- (c) in subsection (3), for the words, “the Minister did not have reasonable grounds for issuing the certificate” there shall be substituted the words “the Minister or person designated by him did not have reasonable grounds for issuing the certificate under regulation 15(1)”.

(8) A person found guilty of an offence under paragraph 12 of Schedule 3 to the Act (offences relating to obstruction of the execution of a warrant) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(9) A government department is not liable to prosecution in relation to an offence under paragraph 12 of Schedule 3 to the Act but that offence shall apply to a person in the public service of the Crown and to a person acting on behalf of either House of Parliament or on behalf of the Northern Ireland Assembly as it applies to any other person.

(10) Section 76(1) of the Act (disclosure of information between Commissioner and ombudsmen) shall apply to any information obtained by, or furnished to, the Commissioner under or for the purposes of these Regulations.

Offence of altering records with intent to prevent disclosure

19.—(1) Where—

- (a) a request for environmental information has been made to a public authority under regulation 5; and
- (b) the applicant would have been entitled (subject to payment of any charge) to that information in accordance with that regulation,

any person to whom this paragraph applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to which the applicant would have been entitled.

(2) Subject to paragraph (5), paragraph (1) applies to the public authority and to any person who is employed by, is an officer of, or is subject to the direction of, the public authority.

(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.

(4) No proceedings for an offence under this regulation shall be instituted—

- (a) in England and Wales, except by the Commissioner or by or with the consent of the Director of Public Prosecutions; or

(b) in Northern Ireland, except by the Commissioner or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(5) A government department is not liable to prosecution in relation to an offence under paragraph (1) but that offence shall apply to a person in the public service of the Crown and to a person acting on behalf of either House of Parliament or on behalf of the Northern Ireland Assembly as it applies to any other person.

Amendment

20.—(1) Section 39 of the Act is amended as follows.

(2) In subsection (1)(a), for “regulations under section 74” there is substituted “environmental information regulations”.

(3) After subsection (1) there is inserted—

“(1A) In subsection (1) “environmental information regulations” means—

- (a) regulations made under section 74, or
- (b) regulations made under section 2(2) of the European Communities Act 1972 for the purpose of implementing any Community obligation relating to public access to, and the dissemination of, information on the environment.”.

Revocation

21. The following are revoked—

- (a) The Environmental Information Regulations 1992⁽¹⁾ and the Environmental Information (Amendment) Regulations 1998⁽²⁾ except insofar as these apply to Scottish public authorities; and
- (b) The Environmental Information Regulations (Northern Ireland) 1993⁽³⁾ and the Environmental Information (Amendment) Regulations (Northern Ireland) 1998⁽⁴⁾.

(1) S.I.1992/3240.
(2) S.I. 1998/1447.
(3) S.R. 1993 No. 45.
(4) S.R. 1998 No. 238.