
DRAFT STATUTORY INSTRUMENTS

2007 No.

The Environmental Permitting
(England and Wales) Regulations 2007

PART 4

Enforcement and offences

Enforcement notices

36.—(1) If the regulator considers that an operator has contravened, is contravening, or is likely to contravene an environmental permit condition, the regulator may serve a notice on him under this regulation (in these Regulations, an “enforcement notice”).

(2) An enforcement notice must—

- (a) state the regulator’s view under paragraph (1);
- (b) specify the matters constituting the contravention or making a contravention likely;
- (c) specify the steps that must be taken to remedy the contravention or to ensure that the likely contravention does not occur; and
- (d) specify the period within which those steps must be taken.

(3) Steps that may be specified in an enforcement notice include steps—

- (a) to make the operation of a regulated facility comply with the environmental permit conditions; and
- (b) to remedy the effects of pollution caused by the contravention.

(4) The regulator may withdraw an enforcement notice at any time by further notice served on the operator.

Suspension notices

37.—(1) If the regulator considers that the operation of a regulated facility under an environmental permit involves a risk of serious pollution, it may serve a notice on the operator under this regulation (in these Regulations, a “suspension notice”).

(2) Paragraph (1) applies whether or not the manner of operating the facility which involves the risk is subject to or contravenes an environmental permit condition.

(3) A suspension notice must—

- (a) state the regulator’s view under paragraph (1);
- (b) specify—
 - (i) the risk of serious pollution mentioned in that paragraph,
 - (ii) the steps that must be taken to remove that risk, and
 - (iii) the period within which the steps must be taken;

- (c) state that the environmental permit ceases to have effect to the extent specified in the notice until the notice is withdrawn; and
 - (d) if the environmental permit continues to authorise an operation, state any steps (in addition to those already required to be taken by the environmental permit conditions) that are to be taken when carrying on that operation.
- (4) If a suspension notice is served the environmental permit ceases to have effect to the extent stated in the notice.
- (5) The regulator—
- (a) may withdraw a suspension notice at any time by further notice served on the operator; and
 - (b) must withdraw a notice when satisfied that the steps specified in it have been taken.

Offences

- 38.**—(1) It is an offence for a person—
- (a) to contravene, or knowingly cause or knowingly permit the contravention of, regulation 12;
 - (b) to fail to comply with or to contravene an environmental permit condition;
 - (c) to fail to comply with the requirements of an enforcement notice, a suspension notice or a landfill closure notice;
 - (d) to fail to comply with a notice under regulation 60(2) requiring the provision of information, without reasonable excuse;
 - (e) to make a statement which he knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made—
 - (i) in purported compliance with a requirement to provide information imposed by or under a provision of these Regulations, or
 - (ii) for the purpose of obtaining the grant of an environmental permit to himself or another person, or the variation, transfer in whole or in part, or surrender in whole or in part of an environmental permit;
 - (f) intentionally to make a false entry in a record required to be kept under an environmental permit condition;
 - (g) with intent to deceive—
 - (i) to forge or use a document issued or authorised to be issued or required for any purpose under an environmental permit condition, or
 - (ii) to make or have in his possession a document so closely resembling such a document as to be likely to deceive.
- (2) It is an offence for an establishment or undertaking to—
- (a) fail to comply with paragraph 9 or 12(3) of Schedule 2; or
 - (b) intentionally make a false entry in a record required to be kept under paragraph 12(3) of Schedule 2.
- (3) If an offence committed by a person under this regulation is due to the act or default of some other person, that other person is also guilty of the offence and liable to be proceeded against and punished accordingly.

Penalties

- 39.**—(1) A person guilty of an offence under regulation 38(1)(a), (b) or (c) is liable—
- (a) on summary conviction to a fine not exceeding £50,000 or imprisonment for a term not exceeding 12 months, or to both; or
 - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years, or to both.
- (2) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003(1), paragraph (1)(a) has effect as if—
- (a) for “£50,000” there were substituted “£20,000”; and
 - (b) for “12 months” there were substituted “6 months”.
- (3) A person guilty of an offence under regulation 38(1)(d), (e), (f) or (g) is liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding 2 years, or to both.
- (4) An establishment or undertaking guilty of an offence under regulation 38(2) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Defence: acts done in an emergency

- 40.** It is a defence for a person charged with an offence under regulation 38(1)(a), (b) or (c) to prove that the acts alleged to constitute the contravention were done in an emergency in order to avoid danger to human health in a case where—
- (a) he took all such steps as were reasonably practicable in the circumstances for minimising pollution; and
 - (b) particulars of the acts were furnished to the regulator as soon as reasonably practicable after they were done.

Offences by bodies corporate

- 41.**—(1) If an offence committed under these Regulations by a body corporate is shown—
- (a) to have been committed with the consent or connivance of an officer; or
 - (b) to be attributable to any neglect on his part,
- the officer as well as the body corporate is guilty of the offence and 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 his functions of management as if he were a director of the body.
- (3) In this regulation, “officer”, in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

Enforcement by the High Court

- 42.** If the regulator considers that proceedings against a person for an offence under regulation 38(1)(c) would afford an ineffectual remedy against the person, the regulator may take

(1) 2003 c. 44.

proceedings in the High Court for the purpose of securing compliance with the enforcement notice, suspension notice or landfill closure notice.

Admissibility of evidence

43. Where, pursuant to an environmental permit granted by a local authority, an entry is required to be made in any record as to the observance of a condition of the environmental permit and the entry has not been made, that fact is admissible as evidence that the condition has not been observed.

Power of court to order cause of offence to be remedied

44.—(1) This regulation applies where a person is convicted of an offence under regulation 38(1) (a), (b) or (c) in respect of a matter which appears to the court to be a matter which it is in his power to remedy.

(2) In addition to or instead of a punishment imposed under regulation 39 the court may order the person to take such steps for remedying the matter within such period as may be specified in the order.

(3) The period may be extended, or further extended, by order of the court on an application made before the end of the period or the extended period, as the case may be.

(4) If a person is ordered to remedy a matter, that person is not liable under regulation 38 in respect of that matter during the period or the extended period.