
DRAFT STATUTORY INSTRUMENTS

2020 No.

The Greenhouse Gas Emissions Trading Scheme Order 2020

PART 7

Enforcement

CHAPTER 2

Civil penalties

Penalty notices

47.—(1) Where the regulator considers that a person is liable to a civil penalty under any of articles 50 to 68 the regulator may impose a civil penalty on the person.

(2) But where the regulator considers that a person is liable to a civil penalty under any of the following, the regulator must impose a civil penalty on the person—

- (a) article 52 (failure to surrender allowances), but only if the person is liable to the excess emissions penalty referred to in article 52(2);
- (b) article 54 (hospitals and small emitters: exceeding emissions target), except where paragraph (3) of that article applies;
- (c) article 59 (ultra-small emitters: reportable emissions exceeding maximum amount).

(3) A civil penalty is imposed on a person by giving a notice (a “penalty notice”) to the person.

(4) Where the civil penalty to which the person is liable consists of a non-escalating penalty only (or where the civil penalty consists of both a non-escalating penalty and a daily penalty, but the regulator decides not to impose a daily penalty), the penalty notice must set out—

- (a) the grounds for liability;
- (b) the amount of the non-escalating penalty (and, where relevant, how the amount is calculated);
- (c) the date by which the non-escalating penalty must be paid (the “due date”), which must not be less than 28 days after the day on which the notice is given;
- (d) the person to whom payment must be made (which must be either the regulator or the appropriate national authority);
- (e) how payment may be made;
- (f) information about rights of appeal.

(5) Where the civil penalty to which the person is liable consists of both a non-escalating penalty and a daily penalty and the regulator considers that the regulator may wish to impose a daily penalty, the regulator must, before giving a penalty notice to the person, first give a notice (an “initial notice”) to the person.

(6) The initial notice must set out—

- (a) the grounds for liability;

- (b) the maximum amount of the non-escalating penalty that may be imposed;
- (c) that the daily penalty that may be imposed begins to accrue on the day on which the initial notice is given;
- (d) the maximum daily rate of the daily penalty and the maximum amount of the daily penalty that may be imposed.

(7) Where, after an initial notice is given to a person, the regulator considers that the total amount of the daily penalty to which the person is liable can be calculated (including where the daily penalty reaches its maximum amount), the regulator may give a penalty notice to the person.

(8) The penalty notice must set out—

- (a) the grounds for liability;
- (b) the amount of the civil penalty (including how the amount is calculated), which may include—
 - (i) a non-escalating penalty; and
 - (ii) a daily penalty;
- (c) the date by which the civil penalty must be paid (the “due date”), which must not be less than 28 days after the day on which the notice is given;
- (d) the person to whom payment must be made (which must be either the regulator or the appropriate national authority);
- (e) how payment may be made;
- (f) information about rights of appeal.

(9) The person to whom a penalty notice is given must pay the civil penalty set out in the notice to the person set out in the notice on or before the due date.

(10) A civil penalty imposed by a penalty notice is recoverable by the regulator as a civil debt.

(11) The regulator must, as soon as reasonably practicable—

- (a) inform the appropriate national authority of a penalty notice given by the regulator;
- (b) pay all sums received or recovered under a penalty notice to the appropriate national authority.

(12) In this article and article 48—

“appropriate national authority” means—

- (a) in the case of a penalty notice given by the chief inspector, the Department of Agriculture, Environment and Rural Affairs;
- (b) in the case of a penalty notice given by SEPA, the Scottish Ministers;
- (c) in the case of a penalty notice given by NRW, the Welsh Ministers;
- (d) in any other case, the Secretary of State;

“daily penalty” means a daily penalty set out in articles 51(3)(b), 55(2)(b), 61(2)(b), 62(2)(b), 63(2)(b), 64(2)(b), 65(2)(b) or 66(2)(b);

“non-escalating penalty” means a civil penalty under articles 50 to 68 that is not a daily penalty.

(13) This article is subject to article 48.