
STATUTORY INSTRUMENTS

1992 No. 530 (S.61)

ENVIRONMENTAL PROTECTION

The Environmental Protection (Determination of Enforcing Authority Etc) (Scotland) Regulations 1992

<i>Made</i>	- - - -	<i>6th March 1992</i>
<i>Laid before Parliament</i>		<i>10th March 1992</i>
<i>Coming into force</i>	- -	<i>1st April 1992</i>

The Secretary of State, in exercise of the powers conferred on him by section 5 of the Environmental Protection Act 1990(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and extent

1. These Regulations may be cited as the Environmental Protection (Determination of Enforcing Authority Etc) (Scotland) Regulations 1992, shall come into force on 1st April 1992 and shall extend to Scotland only.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Environmental Protection Act 1990;

“the 1991 Regulations” means the Environmental Protection (Prescribed Processes and Substances) Regulations 1991(2);

“consulted authority” means whichever of the chief inspector or river purification authority is not determined under regulation 3 to be the enforcing authority and, where that is a river purification authority, it means the river purification authority in whose area the prescribed process in question is, is to be, has been or was to have been, carried on, as the case may be;

“month” means calendar month;

“prescribed process” means a process prescribed under section 2(1) and designated for central control;

“Schedule 4 substance” means a description of substance set out in Schedule 4 to the 1991 Regulations;

(1) 1990 c. 43.

(2) S.I.1991/472, amended by S.I. 1991/836.

“Schedule 5 substance” means a description of substance set out in Schedule 5 to the 1991 Regulations; and

“Schedule 6 substance” means a description of substance set out in Schedule 6 to the 1991 Regulations.

(2) Any reference in these Regulations—

- (a) to a numbered paragraph is a reference to the paragraph bearing that number in the regulation in which the reference is made; and
- (b) to a numbered section is a reference to the section of the Act bearing that number.

Determination of enforcing authority

3.—(1) The enforcing authority for any prescribed process shall be determined by reference to the prescribed substances released from the process and the environmental medium into which they are released so that—

- (a) the chief inspector shall be the enforcing authority where the prescribed process gives rise to—
 - (i) release into the air of a Schedule 4 substance, whether or not it gives rise also to release of a prescribed substance into either land or water or both; or
 - (ii) release into land of a Schedule 6 substance, whether or not it gives rise also to release into the air of a Schedule 4 substance, but not if it gives rise also to release into water of a Schedule 5 substance and no release into the air of a Schedule 4 substance; and
- (b) a river purification authority shall be the enforcing authority where the prescribed process gives rise to release into water of a Schedule 5 substance, whether or not it gives rise also to release into land of a Schedule 6 substance but not if it gives rise also to release into the air of a Schedule 4 substance.

(2) Where the functions conferred or imposed by Part I of the Act are determined under paragraph (1)(b) to be the functions of a river purification authority, they shall be exercisable by the river purification authority in whose area the prescribed process is, is to be, has been, or was to have been, carried on, as the case may be.

Consultation between authorities on applications

4.—(1) The enforcing authority shall send to the consulted authority, within 14 days of receipt, a copy of any application for an authorisation made to it under section 6 or of an application for variation of the conditions of an authorisation made to it under section 11, together with copies of any supporting documents submitted by the applicant, and shall request the consulted authority to make written observations on the application within—

- (a) in the case of an application made under section 11 where the enforcing authority has determined under section 11(2)(d) that the proposed change would not involve a substantial change in the manner in which the process is being carried on, 21 days of the date of receipt of the copy thereof; and
- (b) in any other case, 2 months of that date.

(2) Any observations made by the consulted authority shall include—

- (a) the authority’s opinion as to whether or not the application should be granted and its reasons therefor; and
- (b) any condition which it considers should be imposed on the granting of the application.

(3) Without prejudice to regulation 5 and to the power of the enforcing authority, if it thinks fit, to consider observations made after expiry of the period mentioned in paragraph 1(a) or (b),

any observations made by the consulted authority within the said period shall be considered by the enforcing authority in determining the application.

5.—(1) Subject to paragraph (2), the circumstances in which the consulted authority may require the enforcing authority to include in an authorisation conditions which the consulted authority reasonably believes will achieve the objectives specified in section 7(2) are where the application is made for an authorisation, or for variation of the conditions of an authorisation, for a prescribed process which—

- (a) releases into land a Schedule 6 substance, and for which the consulted authority is the chief inspector and the conditions required by him relate to release of that substance; or
- (b) releases into water a Schedule 5 substance or any other substance which might cause harm if so released, and for which the consulted authority is a river purification authority and the conditions required by it relate to release of that substance.

(2) Paragraph (1) shall not apply where section 7(7) applies and the enforcing authority reasonably believes that the objective referred to in section 7(2) as read with section 7(7) will not be achieved by inclusion of the conditions required by the consulted authority.

Consultation between authorities on enforcement action

6.—(1) Before the enforcing authority varies an authorisation under section 10, revokes an authorisation under section 12 or serves an enforcement or prohibition notice under section 13 or 14 respectively, it shall notify the consulted authority in writing of its intention to do so and the reasons therefor, and the consulted authority may within one month of receipt of notification give written notice to the enforcing authority of any additional grounds on which the proposed action is, in its opinion, justified:

Provided that nothing shall prevent the enforcing authority from taking any such action without consultation as aforesaid or before expiry of the one month period if it considers it expedient to do so in order to prevent or minimise an imminent risk of serious pollution to the environment; and in that event the enforcing authority shall, at the same time as it serves notice on the holder of the authorisation under section 10, 12, 13 or 14, as the case may be, send a copy thereof to the consulted authority with a statement of its reasons for taking such action.

(2) Subject to the proviso to paragraph (1) and without prejudice to the power of the enforcing authority, if it thinks fit, to consider any written notice of additional grounds given by the consulted authority after expiry of the one month period mentioned in paragraph (1), any such notice given within the said period shall be considered by the enforcing authority in deciding whether or not to take the action proposed.

Notification of transfer of authorisation

7. Where the enforcing authority is notified under section 9(2) of the transfer of an authorisation, it shall send a copy of the notification to the consulted authority within 14 days of receipt.

St Andrew's House,
Edinburgh
6th March 1992

James Douglas-Hamilton
Parliamentary Under Secretary of State, Scottish
Office

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part I of the Environmental Protection Act 1990 (“the Act”) provides for the control of pollution from certain processes prescribed under the Act. It also provides that the release of certain prescribed substances into the environment must be controlled. In Scotland the regulatory body for processes prescribed for central, rather than local authority, control is either the chief inspector of Her Majesty’s Industrial Pollution Inspectorate or the river purification authority. The main purpose of these Regulations is to prescribe the criteria for determining which is to be the enforcing authority under Part I of the Act in any particular case.

Regulation 3 provides for the enforcing authority to be determined as follows:—

- (a) where the process releases a prescribed substance to air (whether or not it also releases a prescribed substance to land and/or water) or where it releases a prescribed substance to land but not to water, the enforcing authority is the chief inspector;
- (b) where the process releases a prescribed substance to water only or to both water and land, the enforcing authority is the river purification authority in whose area the process is situated.

The Regulations also provide for consultation in certain circumstances between whichever of the two is determined to be the enforcing authority and the other (the consulted authority). By virtue of regulation 4, the consulted authority must be notified of an application for authorisation or for variation of the conditions of an authorisation within 14 days of receipt by the enforcing authority. Any comments made by the consulted authority within a specified period, which comments must deal with the matters mentioned in regulation 4(2), must be considered by the enforcing authority in determining the application.

Regulation 5 provides that the consulted authority may require inclusion of conditions in an authorisation which relate to the protection of the environmental medium for which it is primarily responsible unless the enforcing authority considers that their inclusion will conflict with the objective specified in section 7(2) of the Act, as read with section 7(7). That objective is relevant where the process is likely to involve release to more than one environmental medium and is essential to minimise the pollution which may be caused to the environment as a whole, having regard to the best practicable environmental option available as respects the substances to be released.

Regulation 6 requires the enforcing authority to notify the consulted authority of its intention to take enforcement action and gives the consulted authority an opportunity to specify additional grounds for such action. This requirement to consult may be dispensed with if the enforcing authority considers that delay could result in serious pollution of the environment.

Regulation 7 requires the consulted authority to be advised of the transfer of an authorisation within 14 days of its being notified to the enforcing authority.