
STATUTORY INSTRUMENTS

2009 No. 890

The Waste Batteries and Accumulators Regulations 2009

PART 12

ENFORCEMENT

Enforcement authorities

86.—(1) Except as provided by paragraph (2), it is the duty of the Secretary of State to enforce these Regulations and in doing so the Secretary of State may appoint a person to act on the Secretary of State's behalf.

(2) It is the duty of the following authorities to enforce Parts 2 and 3, regulations 32(2), 33(2) and Parts 6 and 7—

- (a) in England and Wales, the Environment Agency;
- (b) in Scotland, SEPA; and
- (c) in Northern Ireland, the Department of the Environment.

(3) No proceedings for an offence under these Regulations may be instituted in England, Wales or Northern Ireland except by or on behalf of an enforcement authority.

(4) Nothing in these Regulations authorises an enforcement authority to bring proceedings in Scotland for an offence.

(5) In these Regulations, “enforcement authority” means any person mentioned in this regulation.

Enforcement notices

87.—(1) Where an enforcement authority has reasonable grounds for suspecting that any of the requirements of the following regulations have not been complied with—

- (a) regulations 7, 9, 11 to 13, 15, 16 and 18;
- (b) regulations 19, 21 to 25, 32 and 33;
- (c) regulations 26 and 29;
- (d) regulations 31 and 34;
- (e) regulations 35, 36, 38 to 44 and 46;
- (f) regulations 63, 66 and 67,

it may serve a notice on—

- (i) in a case under sub-paragraph (a), the producer;
- (ii) in a case under sub-paragraph (b), the scheme operator;
- (iii) in a case under sub-paragraph (c), the scheme operator or small producer (as the case may be);
- (iv) in a case under sub-paragraph (d), the distributor;
- (v) in a case under sub-paragraph (e), the producer; and

(vi) in a case under sub-paragraph (f), the approved battery treatment operator or the approved battery exporter (as the case may be).

(2) A notice which is served under paragraph (1) must—

- (a) be in writing;
- (b) state that the enforcement authority suspects that a requirement of these Regulations referred to in paragraph (1) and specified in the notice (“the specified requirement”) has been contravened;
- (c) specify the reason it is suspected that the specified requirement has been contravened;
- (d) require the person on whom the enforcement notice is served (“the relevant person”)—
 - (i) to comply with the specified requirement; or
 - (ii) to provide evidence to the enforcement authority demonstrating that the specified requirement has been met;
- (e) specify the period of time within which the relevant person must comply with the enforcement notice; and
- (f) warn the relevant person that unless the specified requirement is complied with, or evidence has been provided within the period specified in the notice, the person may be prosecuted.

(3) Where an enforcement authority serves an enforcement notice on a person under this regulation, proceedings for an offence under regulation 89 may not be commenced unless the time limit specified for compliance in the enforcement notice has expired.

Powers of entry and inspection

88.—(1) For the purposes of carrying out any functions under these Regulations, an enforcement officer may exercise the powers of entry and inspection in this regulation.

(2) Subject to the production if so requested of evidence of authorisation as an enforcement officer, an enforcement officer may—

- (a) enter at any reasonable time any premises (other than premises occupied only as a person’s residence) which that officer considers it necessary to enter;
- (b) on entering any premises by virtue of sub-paragraph (a)—
 - (i) be accompanied by such other persons as may appear to the officer necessary and, where there is reasonable cause to apprehend any serious obstruction in the execution of the enforcement officer’s duty, a constable; and
 - (ii) take any equipment or materials required for any purpose for which the power of entry is being exercised;
- (c) make such examination and investigation as may in the circumstances be necessary;
- (d) take such measurements and photographs and make such recordings as are considered necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (e) take samples, or cause samples to be taken, of any records, parts of any records, copies of any records, copies of parts of any records, products and parts of products found in or on any premises which the enforcement officer has power to enter;
- (f) in the case of any such sample of a record or product as is mentioned in sub-paragraph (e), take possession of it and detain it for so long as is necessary for any of the following purposes—
 - (i) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything which the enforcement officer has the power to do under that sub-paragraph;

- (ii) to ensure that it is not tampered with before examination of it is completed; and
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations or in any other proceedings relating to an enforcement notice under regulation 87;
 - (g) require any person who is considered to be able to give information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of any person other than a person nominated by that person to be present and any person whom the enforcement officer may allow to be present) such questions as the enforcement officer thinks fit to ask and to sign a declaration of the truth of the answers given;
 - (h) require the production of, or where the information is recorded in computerised form the furnishing of extracts from, any records—
 - (i) which are required to be kept under these Regulations, or
 - (ii) which it is necessary to see for the purposes of an examination or investigation under sub-paragraph (c),and inspect and take copies of, or of any entry in, the records; and
 - (i) require any person to afford such facilities and assistance with respect to any matters or things within that person’s control or in relation to which that person has responsibilities as are necessary to enable the enforcement officer to exercise any of the powers conferred on the enforcement officer by this regulation.
- (3) In the application of paragraph (2)(b)(i) to Northern Ireland, “constable” has the meaning given in section 43A of the Interpretation Act (Northern Ireland) 1954(1).
- (4) If a justice of the peace, on written information on oath—
- (a) is satisfied that there are reasonable grounds to believe that any information or material relevant to any examination or investigation under paragraph (2)(c) is on any premises; and
 - (b) is also satisfied either that—
 - (i) admission to the premises has been, or is likely to be, refused, and that notice of intention to apply for a warrant has been given to the occupier; or
 - (ii) an application for admission, or the giving of such a notice would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,the justice may by warrant under the justice’s hand, which continues in force for a period of one month, authorise the enforcement officer to enter the premises, if need be by force.
- (5) In the application of paragraph (4)—
- (a) to Scotland, “justice of the peace” includes a sheriff and a stipendiary magistrate and references to written information on oath are to be construed as references to evidence on oath; and
 - (b) to Northern Ireland, the references to a “justice of the peace” are to be construed as being references to a “lay magistrate” as defined in section 9 of the Justice (Northern Ireland) Act 2002(2).
- (6) An enforcement officer on entering any premises by virtue of this regulation may direct that those premises, or any part of them, or anything in them, must be left undisturbed (whether generally

(1) 1954 c. 33 (N.I.). Section 43A was inserted by paragraph 1 of Schedule 6 to the Police (Northern Ireland) Act 2000 (c. 32).
(2) 2002 c. 26. Section 9 is amended by Schedule 13 to the 2002 Act itself and is further amended from a date to be appointed by paragraph 41 of Schedule 3 to that Act. Section 9 has also been amended by the Constitutional Reform Act 2005 (c. 4), Schedule 5, paragraph 117.

or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (2)(c).

(7) An enforcement officer who by virtue of this regulation enters any premises which are unoccupied or from which the occupier is temporarily absent, must leave them as effectively secured against unauthorised entry as they were found.

(8) Nothing in this regulation authorises any person to stop any vehicle on a highway.

(9) No answer given by a person in pursuance of a requirement imposed under paragraph (2)(g) is admissible in evidence in England, Wales and Northern Ireland against that person in any proceedings, or in Scotland against that person in any criminal proceedings.

(10) Nothing in this regulation compels the production by any person of a document of which that person would be entitled to withhold production on grounds of—

- (a) legal professional privilege on an order for discovery in an action in the High Court; or
- (b) confidentiality in proceedings in the Court of Session in Scotland.

(11) In these Regulations “enforcement officer” means—

- (a) an officer of an enforcement authority who is authorised in writing by that authority to act as an enforcement officer for the purposes of this Part; and
- (b) a person authorised in writing by the Secretary of State to act as an enforcement officer for the purposes of this Part.