
STATUTORY INSTRUMENTS

2014 No. 861

**The Transfrontier Shipment of Waste
(Amendment) Regulations 2014**

Schedule 5

21.—(1) Schedule 5 (enforcement powers) is amended as follows.

(2) In Part 1—

(a) for paragraph 1 substitute—

“Powers under the Environment Act 1995

1. For the purposes of enforcing the Community Regulation and these Regulations, a person on whom the powers in section 108 of the Environment Act 1995 are conferred may exercise those powers in the English area, the Welsh area and the Scottish area.

Powers under the Waste and Contaminated Land (Northern Ireland) Order 1997

1A. For the purposes of enforcing the Community Regulation and these Regulations, a person on whom the powers in Article 72 of the Waste and Contaminated Land (Northern Ireland) Order 1997 are conferred may exercise those powers in the Northern Irish area.”;

(b) for paragraph 5(2) substitute—

“(2) An authorised person—

(a) may take any or all of the actions specified in sub-paragraph (2A), (2B) or (2C) in relation to that waste;

(b) where the action specified in sub-paragraph (2C) is taken, may take either or both of the actions specified in sub-paragraph (2D).

(2A) The authorised person may seize the waste.

(2B) The authorised person may serve a notice on any person appearing to be in control of the waste prohibiting or restricting the movement of the waste.

(2C) The authorised person may serve a notice on any person appearing to be in control of the waste requiring that person to send the waste to a place specified in the notice (referred to in sub-paragraph (2D) as “the specified place”).

(2D) The authorised person may serve a notice on any person appearing to be in control of the specified place and involved in the shipment of the waste—

(a) requiring that person to accept the waste at that place;

(b) prohibiting or restricting the movement of the waste from that place.”; and

(c) in paragraph 6(4)(b), for “23” substitute “24”.

(3) For Part 2 substitute—

“PART 2

Powers of general customs officials

Powers of general customs officials

8.—(1) A general customs official may seize and detain any waste that has been brought into the United Kingdom or is to be dispatched from the United Kingdom—

- (a) if requested to do so by a competent authority in the United Kingdom; or
- (b) if that official suspects that, in respect of that waste, there is or is likely to be a breach of any provision of the Community Regulation or of these Regulations.

(2) A general customs official who seizes and detains any waste under sub-paragraph (1) (b) must inform the competent authority as soon as possible.

(3) Waste seized and detained under this paragraph may be detained for no more than 5 working days and must be dealt with during the period of its detention in such manner as the Secretary of State may direct under section 5 of the Borders, Citizenship and Immigration Act 2009⁽¹⁾.

(4) In this paragraph—

- (a) “general customs official” means a general customs official designated under section 3(1) of the Borders, Citizenship and Immigration Act 2009; and
- (b) “waste” includes—
 - (i) any thing that the competent authority or general customs official has reasonable grounds to suspect is waste, and
 - (ii) the container in which the waste or thing is carried.”.

(4) After Part 2 insert—

“PART 2A

Powers of persons authorised by the Secretary of State

Powers of entry etc.

8A.—(1) A person authorised by the Secretary of State under regulation 50B(2) (“P”) may, for the purposes of assisting a competent authority in its enforcement of the Community Regulation and these Regulations—

- (a) at any reasonable time board an offshore installation;
- (b) be accompanied by an authorised person and take any equipment or materials that P thinks may be required;
- (c) make such examination or investigation as P considers necessary (“a necessary examination or investigation”);
- (d) give a direction requiring that any part of the offshore installation be left undisturbed (whether generally or in particular respects) for so long as reasonably necessary for the purposes of a necessary examination or investigation;
- (e) take such measurements and photographs and make such recordings as P considers necessary for the purpose of a necessary examination or investigation;

(1) 2009 c.11.

- (f) take samples of any thing found on the offshore installation or in the atmosphere or any land, seabed (including its subsoil) or water in the vicinity of the offshore installation;
 - (g) require any person who P has reasonable cause to believe is able to give any information relevant to a necessary examination or investigation—
 - (i) to attend at a place and time specified by P,
 - (ii) to answer (in the absence of any person other than persons whom P may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as P thinks fit to ask, and
 - (iii) to sign a declaration of truth of that person’s answers;
 - (h) require the production of, and inspect and take copies of or of any entry in, any records which P considers it necessary to see for the purposes of a necessary examination or investigation;
 - (i) require any person to afford P 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 P considers are necessary to enable P to exercise any of the powers conferred on P by this Part.
- (2) P must, if requested to do so, produce a duly authenticated authorisation document.

Supplementary

8B.—(1) An answer given by a person in compliance with a requirement imposed under paragraph 8A(1)(g) is admissible in evidence in England and Wales or Northern Ireland against that person in any proceedings or, in Scotland, against that person in criminal proceedings.

(2) In criminal proceedings in which a person mentioned in sub-paragraph (1) is charged with an offence to which this sub-paragraph applies, no evidence relating to that person’s answer may be adduced and no question relating to it may be asked by or on behalf of the prosecution unless evidence relating to it is adduced by or on behalf of that person.

- (3) Sub-paragraph (2) applies to any offence other than one under—
- (a) section 5 of the Perjury Act 1911⁽²⁾ (false statutory declarations and other false statements without oath);
 - (b) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995⁽³⁾ (false statements and declarations not on oath); or
 - (c) Article 10 of the Perjury (Northern Ireland) Order 1979⁽⁴⁾ (false statutory declarations and other false unsworn statements).
- (4) Nothing in this Part compels the production by a person of a document which—
- (a) except in relation to Scotland, that person would on grounds of legal professional privilege be entitled to withhold on an order for discovery in an action in the County Court or High Court; or
 - (b) in relation to Scotland, contains confidential information made by or to an advocate or solicitor in that capacity and which that person would be entitled to withhold on an order for the production of documents in an action in the Court of Session.”.

(2) 1911 c.6.

(3) 1995 c.39.

(4) 1979/1714 (N.I.19).

Changes to legislation:

There are currently no known outstanding effects for the The Transfrontier Shipment of Waste (Amendment) Regulations 2014, Section 21.