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WELSH STATUTORY INSTRUMENTS

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**2005 No. 1806**

**The Hazardous Waste (Wales) Regulations 2005**

**PART 10**

**ENFORCEMENT**

**Enforcement**

**64.**—(1) Subject to paragraph (2), it is the duty of the Agency to enforce these Regulations.

(2) Paragraph (1) is without prejudice to any right of action which any person may have arising apart from these Regulations, or any other right, power or duty of any person either at law or arising pursuant to any agreement or arrangement (expressly or impliedly) or in consequence of any act or omission.

**Offences**

**65.** It is an offence for a person to fail to comply with any requirement imposed on that person by or under the following provisions of these Regulations—

- (a) Part 4;
- (b) regulations 21, 22, 24, 25 and 26;
- (c) regulations 34 to 44;
- (d) regulation 46 and Schedule 7;
- (e) Part 7 (with the exception of regulation 52); and
- (f) regulation 62.

**Defences**

**66.** It is a defence for a person charged with an offence under regulation 65 to prove that—

- (a) he or she was not reasonably able to comply with the provision in question by reason of an emergency or grave danger and that he or she took all steps as were reasonably practicable in the circumstances for—
  - (i) minimising any threat to the public or the environment; and
  - (ii) ensuring that the provision in question was complied with as soon as reasonably practicable after the event; or
- (b) if there is no emergency or grave danger, he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

### **Liability of persons other than the principal offender**

67.—(1) Where the commission by any person of an offence under this Part is due to the act or default of some other person, that other person may be charged with and convicted of an offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where an offence under this Part which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to, any neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, that person, as well as the body corporate, is liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) applies in relation to the acts or defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

### **False and misleading information**

68.—(1) Any person who, in purported compliance with a requirement imposed by or under any of the foregoing provisions of these Regulations to furnish any information, makes a statement which he or she knows to be false or misleading in a material particular, or recklessly makes any statement which is false or misleading in a material particular, commits an offence.

(2) A person who intentionally makes a false entry in any record or register required to be kept by virtue of any of the foregoing provisions of these Regulations commits an offence.

### **Penalties**

69.—(1) A person who commits an offence under regulation 65 in connection with any of the following regulations—

- (a) regulation 21 (requirement to notify premises);
- (b) regulation 22 (prohibition on removal of waste from premises unless notified or exempt);
- (c) regulations 24 to 26 (notifications);
- (d) regulation 34 (consignment codes);
- (e) regulations 35 to 44 (consignment notes);
- (f) regulation 46 and Schedule 7 (cross-border consignments);
- (g) regulation 53 (consignee and self-disposal quarterly returns);
- (h) regulation 54 (consignee's return to the producer, holder or consignor); or
- (i) regulation 55 (duties to supply information),

is liable on summary conviction, to a fine not exceeding level 5 on the standard scale.

(2) A person who commits an offence under regulation 65 or 68 in connection with any other requirement under these Regulations is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

### **Fixed penalties**

70.—(1) Where an authorised person acting on behalf of the Agency has reason to believe that a person has committed an offence under regulation 65 to which this regulation applies, the authorised

person may give that person a notice offering that person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

(2) This regulation applies to an offence consisting of—

- (a) a failure to comply with any requirement of; or
- (b) making a false or misleading statement in purported compliance with,

any of the regulations listed in regulation 69(1)(a) to (i).

(3) Where a person is given a notice under this regulation in respect of an offence—

- (a) no proceedings may be instituted for that offence before the expiration of twenty eight days following the date of the notice; and
- (b) he or she may not be convicted of that offence if he or she pays the fixed penalty before the expiration of that period.

(4) A notice under this regulation must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence and must state—

- (a) the period during which, by virtue of paragraph (3), proceedings will not be taken for the offence;
- (b) the amount of the fixed penalty; and
- (c) the name of the person to whom and the address at which the fixed penalty may be paid.

(5) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).

(6) Where a letter is sent in accordance with paragraph (5) payment is regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(7) A fixed penalty notice issued pursuant to this section must be in the form set out in Schedule 10.

(8) The fixed penalty payable in pursuance of a notice under this regulation is £300; and as respects the sums received by or on behalf of the Agency, those sums must be paid to the Assembly.

(9) In any proceedings a certificate which—

- (a) purports to be signed by or on behalf of the chief finance officer of the Agency;
- (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(10) In paragraph (9), “chief finance officer” means the person having responsibility for the financial affairs of the Agency.