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# The Notification of Existing Substances (Enforcement) Regulations 1994

1994 No. 1806 Whole Instrument

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## STATUTORY INSTRUMENTS

### 1994 No. 1806

#### ENVIRONMENTAL PROTECTION

#### HEALTH AND SAFETY

### The Notification of Existing Substances (Enforcement) Regulations 1994

*Made*

30th June 1994

*Laid before Parliament*

8th July 1994

*Coming into Force*

29th July 1994

The Secretary of State, in exercise of the powers conferred on him by section 2(2) of the European Communities Act 1972<sup>(1)</sup>, being the Minister designated<sup>(2)</sup> for the purpose of that subsection in relation to the notification and control of substances, and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

#### Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Notification of Existing Substances (Enforcement) Regulations 1994 and shall come into force on 29th July 1994.

(2) In these Regulations—

“the chief inspector” means, in relation to England and Wales, the chief inspector for England and Wales constituted under section 16(3) of the 1990 Act and, in relation to Scotland, the chief inspector for Scotland so constituted;

“the Council Regulation” means Council Regulation (EEC) No. 793/93 on the evaluation and control of the risks of existing substances<sup>(3)</sup>;

“the Executive” means the Health and Safety Executive;

“existing substances” has the meaning given to it by Article 2(e) of the Council Regulation;

“health and safety inspector” means an inspector appointed by the Executive under section 19 of the 1974 Act;

“inspector” means an inspector appointed by the Secretary of State under section 16(1) of the 1990 Act;

“the 1974 Act” means the Health and Safety at Work etc. Act 1974<sup>(4)</sup>;

“the 1990 Act” means the Environmental Protection Act 1990<sup>(5)</sup>.

(3) These Regulations shall not extend to Northern Ireland.

#### Designation of competent authority

2.—(1) The competent authority referred to in Article 13 of the Council Regulation shall, in relation to Great Britain, be the Secretary of State for the Environment and the Executive acting jointly.

(2) In any case where, under a provision of the Council Regulation, a manufacturer or importer of an existing substance is required to furnish information to the member State in which he is located, that requirement shall, in relation to manufacturers or importers located in Great Britain, be satisfied by furnishing the information to the Secretary of State for the Environment and to the Executive.

#### Enforcement by the Executive

3.—(1) The enforcement provisions of the 1974 Act shall apply to any requirement or prohibition imposed upon any manufacturer or importer of existing substances by the

Council Regulation as if the requirement or prohibition were imposed by regulations made under section 15 of that Act.

(2) For the purposes of section 18 of the 1974 Act, notwithstanding regulation 3 of the Health and Safety (Enforcing Authority) Regulations 1989(6), the enforcing authority for the Council Regulation shall be the Executive.

#### Enforcement by the chief inspector

4.—(1) It shall be the duty of the chief inspector to make adequate arrangements for the enforcement of the Council Regulation in relation to existing substances which are or have been manufactured or located in premises in relation to which the powers of an inspector are exercisable by virtue of section 17(2) of the 1990 Act.

(2) The chief inspector may, to any extent, delegate the functions conferred or imposed on him by these Regulations to any other inspector.

(3) For the purposes of the enforcement of the Council Regulation referred to in paragraph (1) above, an inspector may, on production (if so required) of his authority, exercise the following powers—

- (a) at any reasonable time enter any premises referred to in paragraph (1) above which he has reason to believe it is necessary for him to enter;
- (b) on entering any premises by virtue of sub-paragraph (a) above take with him—
  - (i) any person duly authorised by the chief inspector and, if the inspector has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and
  - (ii) 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 any circumstances be necessary;
- (d) as regards any premises which he has power to enter, direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c) above;
- (e) take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under sub-paragraph (c) above;
- (f) take and analyse samples of any articles or substances found in or on any premises which he has power to enter;
- (g) require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) above to answer (in the absence of persons other than a person nominated to be present and any person whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers;
- (h) require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records of any information which are required to be furnished under any provision of the Council Regulation or which it is necessary for him to see for the purposes of an examination or investigation under sub-paragraph (c) above and inspect and take copies of, or of any entry in, the records;
  - (i) require any person to afford him 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 inspector to exercise any of the powers conferred on him by this paragraph.

(4) No answer given by a person in pursuance of a requirement imposed under paragraph (3)(g) above shall be admissible in evidence in England and Wales against that person in any proceedings, or in Scotland against that person in any criminal proceedings.

(5) Nothing in this regulation shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court or, in relation to Scotland, on an order for production of documents in an action in the Court of Session.

(6) An inspector shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under this regulation if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

#### Enforcement notices

5.—(1) If the chief inspector is of the opinion that a person has failed to comply with one or more of the provisions of the Council Regulation he may serve on him a notice ("an enforcement notice").

(2) An enforcement notice shall—

- (a) state that the chief inspector is of the said opinion;
- (b) specify the matters constituting the failure to comply;
- (c) specify the steps that must be taken to remedy the failure to comply; and
- (d) specify the period within which those steps must be taken.

(3) Where an enforcement notice which is not to take immediate effect has been served—

- (a) the notice may be withdrawn by the chief inspector at any time before the end of the period specified therein; and
- (b) the period so specified may be extended or further extended by the chief inspector at any time when an appeal against the notice is not pending.

#### Appeals against enforcement notices

6.—(1) A person on whom an enforcement notice is served may appeal against the notice to an industrial tribunal.

(2) On the determination of an appeal under paragraph (1) above, the tribunal may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the tribunal thinks fit.

(3) An appeal under paragraph (1) above shall be brought within the time limit and in the manner that have been prescribed in respect of an improvement notice served under section 21 of the 1974 Act by the Industrial Tribunals (Constitution and Rules of Procedure) Regulations 1993(7), in respect of England and Wales, and by the Industrial Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 1993(8), in respect of Scotland.

(4) Where an appeal is brought under paragraph (1) above, the bringing of the appeal shall have the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal.

(5) One or more assessors may be appointed for the purposes of any proceedings brought before an industrial tribunal under paragraph (1) above.

**Offences in relation to the notification of information about existing substances**

7.—(1) It shall be an offence for a person—

- (a) to fail to comply with any provision of the Council Regulation;
- (b) to make a statement which he knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made in purported compliance with a requirement to furnish any information imposed by or under any provision of the Council Regulation;
- (c) intentionally to make a false entry in any register, book, notice or other document required by any provision of the Council Regulation to be kept, served or given or, with intent to deceive, to make use of any such entry which he knows to be false.

(2) Where an inspector, under regulations 4 and 5 above, or a health and safety inspector, under sections 20 and 21 of the 1974 Act, exercises his powers for the purposes of enforcing the Council Regulation, it shall be an offence for a person—

- (a) to fail to comply with or contravene any requirement imposed by an enforcement notice served under regulation 5 above or with an improvement notice served under section 21 of the 1974 Act including any such notice as modified on appeal;
- (b) without reasonable excuse to fail to comply with any requirement imposed under regulation 4 above or under section 20 of the 1974 Act;
- (c) to prevent any other person from appearing before or from answering any question to which an inspector, by virtue of regulation 4 above, or a health and safety inspector, by virtue of section 20 of the 1974 Act, may require an answer;
- (d) intentionally to obstruct an inspector or a health and safety inspector in the exercise or performance of his powers or duties under regulation 4 above or section 20 of the 1974 Act;
- (e) to fail to comply with an order made by a court under regulation 8 below.

(3) A person guilty of an offence under sub-paragraph (a) or (e) of paragraph (2) above or under sub-paragraph (a), (b) or (c) of paragraph (1) above shall be liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.

(4) A person guilty of an offence under sub-paragraph (b), (c), or (d) of paragraph (2) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) Where an offence under paragraph (1) above is committed by reason of a failure to do something at or within a time fixed by any of the provisions of the Council Regulation, the offence shall be deemed to continue until that thing is done.

(6) Where—

- (a) an entry is required to be made in any register or other record as to the observance of any provision of the Council Regulation; and
- (b) the entry has not been made;

that fact shall be admissible as evidence in proceedings for an offence under paragraph (1) above that the provision has not been observed.

(7) Summary proceedings for an offence under paragraph (1) or (2) above may be commenced at any time within six months from the date on which there comes to the knowledge of the chief inspector or the Executive evidence sufficient in the opinion of the chief inspector or the Executive to justify a prosecution for that offence; and for the purposes of this paragraph—

- (a) a certificate of the chief inspector or the Executive stating that such evidence came to his or its knowledge on a specified date shall be conclusive evidence of that fact; and
- (b) a document purporting to be such a certificate and to be signed by or on behalf of the chief inspector or the Executive shall be presumed to be such a certificate unless the contrary is proved.

(8) In the application of paragraph (7) above to Scotland—

- (a) for the words from “there comes” to “that offence” there shall be substituted the words “evidence sufficient to justify a report to the Lord Advocate with a view to consideration of the question of prosecution, comes to the knowledge of the chief inspector or the Executive”;
- (b) at the end of paragraph (b) there shall be added the words

“and

- (c) section 23(2) of the Summary Jurisdiction (Scotland) Act 1954<sup>(9)</sup> (date of commencement of proceedings) shall have effect as it has effect for the purposes of that section.”.

(9) Proceedings for an offence under paragraph (1) or (2) above shall not, in England and Wales, be instituted except by an inspector or a health and safety inspector or by or with the consent of the Director of Public Prosecutions.

(10) In England and Wales an inspector, if authorised to do so by the Secretary of State for the purposes of section 23(5) of the 1990 Act, or a health and safety inspector, if authorised to do so by the Executive for the purposes of section 39 of the 1974 Act may, although not of counsel or a solicitor, prosecute before a magistrates' court proceedings for an offence under paragraph (1) or (2) above.

**Power of court to order cause of offence to be remedied**

8.—(1) Where a person is convicted of an offence under regulation 7(1)(a) or 7(2)(a) above in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying those matters.

(2) The time fixed by an order under paragraph (1) above may be extended or further extended by order of the court on an application made before the end of the time originally fixed or as extended under this paragraph, as the case may be.

(3) Where a person is ordered under paragraph (1) above to remedy any matters, that person shall not be liable under regulation 7 above in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed under paragraph (2) above.

**Offences by corporations**

9.—(1) Where an offence under regulation 7 above 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, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such

capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) above shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where, in Scotland, an offence under regulation 7 above committed by a Scottish partnership or unincorporated association (other than a partnership) 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 partner in the partnership or, as the case may be, a person concerned in the management or control of the association, he as well as the partnership or association shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

#### Offences due to the fault of others

10. Where the commission by any person of an offence under regulation 7 above is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this regulation whether or not proceedings for the offence are taken against the first-mentioned person.

#### Service of notices

11.—(1) Any notice required or authorised by these Regulations to be served or given to an inspector or a health and safety inspector may be served or given by delivering it to him or by leaving it at, or sending it by post to, his office.

(2) Any such notice required to be served on or given to any person other than an inspector or a health and safety inspector may be served or given by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.

(3) Any such notice may—

- (a) in the case of a body corporate, be served on or given to the secretary or clerk of that body;
- (b) in the case of a partnership, be served on or given to a partner or person having control of the management of the partnership business.

(4) For the purposes of this regulation and of section 7 of the Interpretation Act 1978(10) (service of documents by post) in its application to this regulation, the proper address of any person on or to whom any such notice is to be served or given shall be his last known address, except that—

- (a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body;
- (b) in the case of a partnership or person having the control or the management of the partnership business, it shall be the principal office of the partnership;

and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be their principal office within the United Kingdom.

(5) If the person to be served with or given any such notice has specified an address in the United Kingdom other than his proper address within the meaning of paragraph (4) above as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address will also be treated for the purposes of this regulation and section 7 of the Interpretation Act 1978 as his proper address.

(6) The preceding provisions of this regulation shall apply to the sending or giving of a document as they apply to the giving of a notice.

#### Application to the Crown

12.—(1) Subject to paragraphs (2), (3) and (4) below, the provisions of these Regulations shall bind the Crown.

(2) Nothing in this regulation shall be so construed as to apply sections 21 to 25 of the 1974 Act (as they are applied by regulation 3(1) above) to the Crown or to persons in the public service of the Crown.

(3) No contravention by the Crown of any provision of these Regulations shall make the Crown criminally liable; but the High Court or, in Scotland, the Court of Session, may, on the application of the chief inspector or the Executive, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(4) Notwithstanding anything in paragraph (3) above, these Regulations shall apply to persons in the public service of the Crown as they apply to other persons.

30th June 1994

*John Selwyn Gummer*  
Secretary of State for the Environment

30th June 1994

*John Redwood*  
Secretary of State for Wales

By order of the Secretary of State

*Michael Forsyth*  
Minister of State,  
Department of Employment

4th July 1994

*Hector Monro*  
Parliamentary Under Secretary of State, Scottish Office

6th July 1994

#### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations give full effect in England, Wales and Scotland to Council Regulation (EEC) No. 793/93 (OJ No. L84, 5.4.93, p.1) on the evaluation and control of the risks of existing substances.

The Health and Safety Executive and the Secretary of State for the Environment are designated as the joint competent authority for the purposes of Article 13 of the Council Regulation (regulation 2).

Regulations 3 to 12 establish an enforcement regime for the Council Regulation.

Regulation 3 enables the Health and Safety Executive to exercise its enforcement powers under the Health and Safety at Work etc. Act 1974 for the purposes of enforcing the Council Regulation.

Regulations 4 to 6 set out the equivalent enforcement powers of the chief inspectors. These enforcement powers extend only to existing substances which are or have been manufactured or located in premises in relation to which the chief inspectors already exercise enforcement powers under section 17 of the Environmental Protection Act 1990 (regulation 4(1)).

Regulation 7(1) creates criminal offences in respect of failing to comply with the provisions of the Council Regulation. Regulation 7(2) creates offences in respect of failing to comply with the enforcement powers of the Executive or of the chief inspectors.

The Regulations also make provision for a court to order that certain matters be remedied (regulation 8), regarding the commission of offences by corporations (regulation 9), for the prosecution of offences due to the fault of another person (regulation 10), regarding the service of notices (regulation 11) and regarding the application of the Regulations to the Crown (regulation 12).

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- (1) [1972 c. 68.](#)
  - (2) [S.I. 1981/1536.](#)
  - (3) [OJ No. L84, 5.4.93, p.1.](#)
  - (4) [1974 c. 37.](#)
  - (5) [1990 c. 43.](#)
  - (6) [S.I. 1989/1903.](#)
  - (7) [S.I. 1993/2687.](#)
  - (8) [S.I. 1993/2688.](#)
  - (9) [1954 c. 48.](#)
  - (10) [1978 c. 30.](#)

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