STATUTORY INSTRUMENTS

2018 No. 436

ENERGY

The Works Detrimental to Navigation (Powers and Duties of Inspectors) Regulations 2018

Made - - - - 26th March 2018

Coming into force in accordance with regulation 1(2)

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 82N(3), (4) and (5) and 104(2) of the Energy Act 2008(**1**).

In accordance with section 105(3) of that Act, a draft of this instrument has been approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Works Detrimental to Navigation (Powers and Duties of Inspectors) Regulations 2018.

(2) These Regulations come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

"inspector" means a person appointed by the Secretary of State to act as an inspector under section 82N(1) of the Energy Act 2008;

"installation" includes any works or object;

"vessel" includes any floating structure that is capable of being manned.

Powers of inspectors

3.—(1) An inspector may exercise the powers set out in this regulation for the purpose of assisting in carrying out the functions of the Secretary of State under Part 4A of the Energy Act 2008 (including, in particular, monitoring, investigating and enforcing compliance with a requirement imposed by or under that Part).

(2) An inspector may—

(**1**) 2008 c.32. Part 4A (sections 82A to 82Q) of that Act was inserted by section 314(1) of the Marine and Coastal Access Act 2009 (c.23).

(a) at any reasonable time (or, if the inspector has reason to believe that a danger to navigation has arisen, at any time) access or board any installation or vessel in the regulated zone(**2**) that the inspector thinks it is necessary to board or access; and

(b) on accessing or boarding an installation or vessel, take with the inspector—

(i) any other person authorised by the Secretary of State; and

(ii) any equipment or materials required for any purpose for which the power to access or board is exercised.

(3) An inspector may—

(a) make any examination or investigation that the inspector thinks necessary;

(b) install or maintain monitoring or other apparatus on an installation or vessel in the regulated zone for the purpose of the examination or investigation;

(c) direct that any part of an installation or vessel in the regulated zone, or anything in it, be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of the examination or investigation;

(d) take such measurements and photographs and record such information as the inspector thinks necessary for the purpose of the examination or investigation;

(e) cause anything found during the examination or investigation to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary);

(f) take possession of anything found during the examination or investigation and detain or remove 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 that the inspector has the power to do under sub-paragraph (e);

(ii) to ensure that it is not tampered with before examination of it is completed;

(iii) to ensure that it is available for use as evidence in any proceedings for an offence under Part 4A of the Energy Act 2008 or an offence under regulation 6;

(g) require any person whom the inspector has reason to believe to be able to give information relevant to the examination or investigation—

(i) to attend at a place and reasonable time specified by the inspector;

(ii) to answer (in the absence of persons other than a person nominated by that person to be present and persons whom the inspector allows to be present) such questions as the inspector thinks appropriate to ask;

(iii) to sign a declaration of the truth of that person's answers;

(h) require the production of, or where information is recorded in electronic form, the furnishing of extracts from, any documents or records that the inspector thinks it is necessary for the inspector to inspect for the purposes of the examination or investigation and—

(i) take possession of the documents, records or extracts and detain or remove them for so long as is necessary for any of the purposes referred to in sub-paragraph (f);

(ii) take copies of, or of any entry in, the documents or records.

(4) An inspector may 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 that are necessary to enable the inspector to exercise the powers conferred on the inspector by this regulation.

(5) An inspector may not, when exercising the power set out in paragraph (3)(h)(i)—

(**2**) "Regulated zone" is defined in section 82Q of the Energy Act 2008.

(a) detain or remove a document or record for any of the purposes referred to in paragraph (3)(f) if a copy would be sufficient for that purpose; or

(b) remove from any place a document or record that is required by law to be kept at the place.

(6) A person is not required under this regulation to disclose information or produce a document or record that the person would be entitled to refuse to disclose or produce—

(a) on grounds of legal professional privilege in proceedings in the High Court; or

(b) on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.

Duty to produce evidence of appointment

4. If requested to do so, an inspector must produce evidence of the inspector's appointment under section 82N(1) of the Energy Act 2008 before exercising a power conferred by regulation 3.

Answers given in compliance with requirement under regulation 3(3)(g): admissibility in evidence

5.—(1) An answer given by a person in compliance with a requirement imposed under regulation 3(3)(g) may be used in evidence against the person.

(2) But in criminal proceedings in which the person is charged with an offence to which this paragraph applies—

(a) no evidence relating to the person's answer may be adduced; and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of the person.

(3) Paragraph (2) applies to any offence other than—

(a) an offence under regulation 6(1);

(b) an offence under section 5 of the Perjury Act 1911(**3**) (false statutory declarations and other false statements without oath);

(c) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995(**4**) (false statements and declarations); and

(d) an offence under article 10 of the Perjury (Northern Ireland) Order 1979(**5**) (false statutory declarations and other unsworn statements).

Offences

6.—(1) A person commits an offence if the person, in compliance with a requirement imposed under regulation 3(3)(g)—

(a) makes a statement that the person knows to be false or misleading in a material respect; or

(b) makes a statement that is false or misleading in a material respect, being reckless as to whether it is.

(2) A person commits an offence if the person intentionally obstructs an inspector in the exercise or performance of the inspector's powers or duties as an inspector.

(3) A person commits an offence if the person, without reasonable excuse—

(**3**) 1911 c.6.
(**4**) 1995 c.39.
(**5**) S.I. 1979/1714 (N.I. 19).