Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Control of Mercury (Enforcement) Regulations 2017. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2017 No. 1200

ENVIRONMENTAL PROTECTION

The Control of Mercury (Enforcement) Regulations 2017

Made - - - - 4th December 2017

Laid before Parliament 5th December 2017

Coming into force in accordance with regulation

The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972 [F1] in relation to the environment [F2].

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of that Act [F3].

F1 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The Secretary of State continues to be able to implement European Union law, so far as it is devolved, under section 57 of the Scotland Act 1998 (c.46) (in respect of Scotland) and paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c.32) (in respect of Wales).

F2 S.I. 2008/301.

F3 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The Secretary of State continues to be able to implement European Union law, so far as it is devolved, under section 57 of the Scotland Act 1998 (c.46) (in respect of Scotland) and paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c.32) (in respect of Wales).

PART 1

Introductory

Citation and application

1.—(1) These Regulations may be cited as the Control of Mercury (Enforcement) Regulations 2017.

(2) These Regulations apply to the regulation of activities relating to mercury in the United Kingdom including—

(a) in the territorial sea (see regulation 3), and

(b) in respect of offshore installations in the offshore area (see paragraphs 1 and 2 of Schedule 2).

Commencement

2.—(1) These Regulations (except Parts 2 and 3) come into force on 1st January 2018.

(2) Parts 2 and 3 (which are about civil enforcement except in Scotland and the Scottish offshore area) come into force on 1st April 2018.

Interpretation

3. In these Regulations—

"the Mercury Regulation" means Regulation EU 2017/852 of the European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008[F4];

"the EA 1995" means the Environment Act 1995 [F5];

"the EO 2002" means the Environment (Northern Ireland) Order 2002 [F6];

"the TSWR 2007" means the Transfrontier Shipment of Waste Regulations 2007 [F7];

"the WCLO 1997" means the Waste and Contaminated Land (Northern Ireland) Order 1997 [F8];

"the Agency" means the Environment Agency;

"civil penalty" is to be read in accordance with regulation 10(2) and (5);

"civil penalty notice" is to be read in accordance with regulation 10(2);

"DAERA" means the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;

"enforcement notice" is to be read in accordance with the following—

(a) regulation 8(2), in the case of an enforcement notice given by the Agency or NRW;

(b) regulation 20(2), in the case of an enforcement notice given by DAERA;

(c) regulation 26(2), in the case of an enforcement notice given by SEPA;

"England" includes the territorial sea which does not form part of Northern Ireland, Scotland or Wales;

"information notice" is to be read in accordance with regulation 35(2);

"Northern Ireland" includes the Northern Irish area within the meaning given by regulation 4(1) of the TSWR 2007 (which describes an area of territorial sea adjacent to Northern Ireland);

"NRW" means the Natural Resources Body for Wales;

"relevant provision" means a provision listed in Schedule 1;

"Scotland" includes the area of territorial sea falling within the Scottish area within the meaning given by regulation 4(1) of the TSWR 2007 (which describes an area of sea adjacent to Scotland);

"SEPA" means the Scottish Environment Protection Agency;

"territorial sea" means the territorial sea adjacent to the United Kingdom [F9];

"Wales" includes the Welsh area within the meaning given by regulation 4(1) of the TSWR 2007 (which describes an area of territorial sea adjacent to Wales).

F4 OJ No L 137, 24.5.2017, p1.

F5 1995 c.25. Relevant amending enactments are as follows. For section 41, S.I. 2017/1200. For section 108, section 55 of the Anti-social Behaviour Act 2003 (c.38), **section 53** of the Clean Neighbourhoods and Environment Act 2005 (c.16), **paragraph 3** of Schedule 2 to the Protection of Freedoms Act 2012 (c.9) and section 46 of the Regulatory Reform (Scotland) Act 2014 (asp 3) ("the RRSA 2014") and S.I. 2013/755 and 2016/475. For section 110, paragraph 29 of Schedule 3 to the RRSA 2014. For Schedule 18, section 46 of the RRSA 2014.

F6 S.I. 2002/3153 (N.I. 7), amended by S.I. 2011/2911 and 2017/1200. There are other amending instruments but none is relevant.

F7 S.I. 2007/1711, amended by S.I. 2014/861. There are other amending instruments but none is relevant.

F8 S.I. 1997/2778 (N.I. 19). Relevant amending enactments are as follows. For Article 72, section 5 of, and paragraph 2 of Schedule 1 and paragraph 1 of Schedule 2 to, the Waste and Contaminated Land (Amendment) Act (Northern Ireland) 2011 (c. 5) ("the WCLA 2011") and S.I. 2007/611 (N.I. 3). For Article 74, S.I. 2007/611. For Schedule 4, paragraph 1 of Schedule 2 to the WCLA 2011.

F9 Section 1(5) of the Territorial Sea Act 1987 (c.49) has the effect that the reference to the territorial sea adjacent to the United Kingdom must be construed in accordance with that section and with any provision made, or having effect as if made, under that section. S.I. 1989/482 and 2014/1353 are relevant instruments made under that section.

Definitions relating to offshore installations

4. In these Regulations, "offshore installation", "offshore area", "English offshore area" and "Scottish offshore area" have the meanings given by Schedule 2.

"Enforcing authority"

5. In these Regulations, "enforcing authority" means—

(a) the Agency, for England and offshore installations in the English offshore area;

(b) DAERA, for Northern Ireland;

(c) SEPA, for Scotland and offshore installations in the Scottish offshore area;

(d) NRW, for Wales.

Designation of competent authority

6. The enforcing authority is designated as the competent authority in accordance with Article 17 of the Mercury Regulation (which requires the designation of authorities responsible for performing certain functions under that Regulation).

PART 2

Civil enforcement in England and Wales

Application of this Part

7.—(1) This Part applies to civil enforcement—

(a) in England and in respect of offshore installations in the English offshore area (see paragraphs 1 and 3 of Schedule 2), and

(b) in Wales.

Enforcement notices

8.—(1) An enforcing authority may give a person an enforcement notice if condition A or B is met.

(2) An enforcement notice is a notice requiring the person to take action (including to stop doing any thing).

(3) Condition A is that the enforcing authority is of the opinion that the person has failed or is failing to comply with a relevant provision or provisions.

(4) Condition B is that the enforcing authority is of the opinion that the person is likely to fail to comply with a relevant provision or provisions.

(5) The action which the enforcing authority may require the person to take is any one or more of the following—

(a) action to ensure compliance with the relevant provision or provisions in question;

(b) action to remediate any environmental damage attributable to the non-compliance in question;

(c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.

(6) An enforcement notice must state—

(a) the matters constituting the failure or likelihood of failure,

(b) the action which must be taken under paragraph (5),

(c) the period (the "compliance period") within which the action must be taken,

(d) that there is a right to appeal against the enforcement notice and how that right may be exercised, and

(e) the consequences of failing to comply with the enforcement notice (see regulations 9, 10, 18 and 41 which relate to action to ensure compliance, civil penalties, civil proceedings and offences respectively).

(7) An enforcing authority may withdraw an enforcement notice given by it by informing the person to whom it was given in writing.

(8) A person to whom an enforcement notice is given may appeal to the First-tier Tribunal against it on one or more of the following grounds—

(a) that the decision to give the enforcement notice was based on an error of fact;

(b) that the decision was wrong in law;

(c) that the nature of what is required by the enforcement notice is unreasonable;

(d) that the decision was unreasonable for any other reason;

(e) any other ground.

Action by authority to ensure compliance with enforcement notices

9.—(1) This regulation applies where—

(a) an enforcing authority has given an enforcement notice to a person, and

(b) the enforcing authority is of the opinion that the person has not carried out one or more of the actions referred to in the enforcement notice within the compliance period (see regulation 8(6)(c)).

(2) The enforcing authority may take any of the following action (whether the same as or different to any action referred to in the enforcement notice)—

(a) action to ensure compliance with the relevant provision or provisions in question;

(b) action to remediate any environmental damage attributable to the non-compliance in question;

(c) action to remove or mitigate any risk of non-compliance with the relevant provision or provisions in question.

(3) If the enforcing authority proposes that any of the action under paragraph (2) be taken on any premises, the provisions referred to in paragraphs (4) and (5) (which relate to powers of enforcing authorities and persons authorised by them and related matters) apply but as if modified in the way shown.

(4) Where the Agency proposes to take the action, sections 108, 109 and 110 of, and Schedule 18 to, the EA 1995 (as they apply in England) apply but as if—

(a) in section 108 there were a reference to the purpose of taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of purposes in subsection (1);

(b) in section 108 there were a reference to taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of powers in subsection (4);

(c) in paragraph 6(1) of Schedule 18 the reference in the words before paragraph (a) to any power conferred by section 108(4)(a) or (b) or (5) of this Act included a reference to the power conferred by virtue of sub-paragraph (b) above.

(5) Where NRW proposes to take the action, sections 108, 109 and 110 of, and Schedule 18 to, the EA 1995 (as they apply in Wales) apply but as if—

(a) in section 108 there were a reference to the purpose of taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of purposes in subsection (1);

(b) in section 108 there were a reference to taking action to ensure compliance with a relevant provision or provisions referred to in an enforcement notice at the end of the list of powers in subsection (4);

(c) in paragraph 6(1) of Schedule 18 the reference in the words before paragraph (a) to any power conferred by section 108(4)(a) or (b) or (5) of this Act included a reference to the power conferred by virtue of sub-paragraph (b) above.

Civil penalties

10.—(1) An enforcing authority may give a person a civil penalty notice if condition A or B is met.

(2) A civil penalty notice is a notice requiring the person to pay a civil penalty.

(3) Condition A is that the enforcing authority is satisfied, on the balance of probabilities, that the person has failed or is failing to comply with a relevant provision.

(4) Condition B is that the enforcing authority is satisfied, on the balance of probabilities, that the person has failed or is failing to fully comply with an enforcement notice or information notice.

(5) An enforcing authority may determine the amount of civil penalty in respect of a failure but the amount must not exceed £200,000.

(6) A civil penalty notice must not be given to a person in respect of a failure—

(a) where the enforcing authority has started criminal proceedings against the person under regulation 41 for the failure and those proceedings have not concluded, or

(b) where the person has been convicted of an offence under regulation 41 for the failure.