Regulatory Reform (Scotland) Act 2014

2014 asp 3

PART 3

ENVIRONMENTAL REGULATION

CHAPTER 4

MISCELLANEOUS

Offence relating to significant environmental harm

40 Significant environmental harm: offence

(1) It is an offence for a person to—

(a) act, or permit another person to act, in a way that causes or is likely to cause significant environmental harm, or

(b) fail to act, or permit another person not to act, in a way such that (in either case) the failure to act causes or is likely to cause significant environmental harm.40

(2) But no offence is committed under subsection (1) by a person who permits another person to act or not to act as mentioned in that subsection if the permission was given by or under an enactment conferring power on the person to authorise the act, or failure to act, that caused or (as the case may be) was likely to cause such harm (however such authorisation may be expressed).

(3) A person who acts, fails to act or permits another person to act or not to act as mentioned (in each case) in subsection (1) commits an offence under that subsection whether or not the person—

(a) intended the acts or failures to act to cause, or be likely to cause, significant environmental harm, or

(b) knew that, or was reckless or careless as to whether, the acts or failures to act would cause or be likely to cause such harm.

(4) For the purposes of subsection (1), a person acts in a way that is likely to cause significant environmental harm, or fails to act in a way such that the failure is likely to

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cause such harm if, at the time of so acting or failing to act, such harm may reasonably have been considered likely to occur even if it did not (for whatever reason) in fact occur.

(5) It is a defence for a person charged with an offence under subsection (1) to show that—
- (a) the acts or failures alleged to constitute the offence were necessary in order to avoid, prevent or reduce an imminent risk of serious adverse effects on human health,
- (b) the person took all such steps as were reasonably practicable in the circumstances to minimise any environmental harm, and
- (c) particulars about the acts or failures were given to SEPA as soon as practicable after the acts or failures took place.

(6) It is a defence for a person charged with an offence under subsection (1) to show that the acts or failures alleged to constitute the offence were authorised by or otherwise carried out in accordance with—
- (a) regulations made under section 18,
- (b) an authorisation given under such regulations, or
- (c) an enactment specified in an order made by the Scottish Ministers for the purposes of this section.

(7) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction to—
  - (i) a fine not exceeding £40,000,
  - (ii) imprisonment for a term not exceeding 12 months, or
  - (iii) both,
- (b) on conviction on indictment to—
  - (i) a fine,
  - (ii) imprisonment for a term not exceeding 5 years, or
  - (iii) both.

(8) In this section, "environmental harm" has the same meaning as in section 17(2).

(9) For the purposes of this section, environmental harm is "significant" if—
- (a) it has or may have serious adverse effects, whether locally, nationally or on a wider scale, or
- (b) it is caused or may be caused to an area designated in an order by the Scottish Ministers for the purposes of this section.

(10) An order under subsection (9) may make different provision for—
- (a) different areas, or
- (b) different types of significant environmental harm in relation to different areas.

Commencement Information

I1 S. 40 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

41 Power of court to order offence to be remedied

(1) This section applies where—
- (a) a court convicts a person of an offence under section 40(1),

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(b) it appears to the court that it is within the power of the person to remedy or mitigate the significant environmental harm to which the conviction relates.

(2) The court may, in addition to or instead of dealing with the person in any other way, order the person to take such steps as may be specified in the order to remedy or mitigate the harm.

(3) An order under subsection (2) (a "remediation order") is to be taken to be a sentence for the purposes of any appeal.

(4) A remediation order must specify a period ("the compliance period") within which the steps mentioned in that subsection are to be taken.

(5) On an application by the person convicted of the offence, the court may, on more than one occasion—

(a) extend the compliance period within which those steps are to be taken,

(b) vary the steps specified in a remediation order.

(6) An application under subsection (5) must be made before the end of the compliance period.

(7) A person who fails to comply with a remediation order commits an offence.

(8) A person who commits an offence under subsection (7) is liable—

(a) on summary conviction to—

(i) a fine not exceeding £40,000,

(ii) imprisonment for a term not exceeding 12 months, or

(iii) both,

(b) on conviction on indictment to—

(i) a fine,

(ii) imprisonment for a term not exceeding 5 years, or

(iii) both.

Commencement Information

I2 S. 41 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

42 Corporate offending

(1) Subsection (2) applies where—

(a) an offence under section 40(1) or 41(7) is committed by a relevant organisation, and

(b) the commission of the offence involves the connivance or consent, or is attributable to the neglect, of a responsible official of the relevant organisation.

(2) The responsible official (as well as the relevant organisation) commits the offence.

(3) In this section—

"a relevant organisation" means—

(a) a company,

(b) a limited liability partnership,

(c) a partnership (other than a limited liability partnership), or

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(d) another body or association,

"a responsible official" means—

(a) in the case of a company, a director, secretary, manager or similar officer of the company,

(b) in the case of a limited liability partnership, a member of the partnership,

(c) in the case of a partnership (other than a limited liability partnership), a partner of the partnership, or

(d) in the case of another body or association, a person who is concerned in the management or control of its affairs,

and in each case includes a person purporting to act in a capacity mentioned in any of paragraphs (a) to (d) of this definition.

Commencement Information

I3 S. 42 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

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