



# Regulatory Reform (Scotland) Act 2014

## 2014 asp 3

### PART 3

#### ENVIRONMENTAL REGULATION

#### CHAPTER 4

#### MISCELLANEOUS

##### *Vicarious liability*

#### **38 Vicarious liability for certain offences by employees and agents**

- (1) Subsection (2) applies where a person (“A”) commits a relevant offence while acting as the employee or agent of another person (“B”).
- (2) B also commits the relevant offence and is liable to be proceeded against and punished accordingly.
- (3) Where B is charged with a relevant offence by virtue of subsection (2), it is a defence for B to show—
  - (a) that B did not know that the relevant offence was being committed by A,
  - (b) that no reasonable person could have suspected that the relevant offence was being committed by A, and
  - (c) that B took all reasonable precautions and exercised all due diligence to prevent the offence being committed.
- (4) Proceedings may be taken against B in respect of the relevant offence whether or not proceedings are also taken against A in respect of that offence.

#### **39 Liability where activity carried out by arrangement with another**

- (1) Subsection (2) applies where, in the course of carrying on a regulated activity—
  - (a) a person (“A”) commits a relevant offence,

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- (b) at the time the offence is committed, A is carrying on the regulated activity for another person (“B”), and
  - (c) B manages or controls the carrying on of the regulated activity.
- (2) B also commits the relevant offence and is liable to be proceeded against and punished accordingly.
- (3) Where B is charged with a relevant offence by virtue of subsection (2), it is a defence for B to show—
- (a) that B did not know that the relevant offence was being committed by A,
  - (b) that no reasonable person could have suspected that the relevant offence was being committed by A, and
  - (c) that B took all reasonable precautions and exercised all due diligence to prevent the offence being committed.
- (4) Proceedings may be taken against B in respect of the relevant offence whether or not proceedings are also taken against A in respect of that offence.
- (5) For the purposes of subsection (1)(b), A is carrying on a regulated activity for B whether A is carrying on the activity—
- (a) by arrangement between A and B, or
  - (b) by arrangement with, or as employee or agent of, any other person (“C”) with whom B has an arrangement under which C is to carry on the regulated activity.
- (6) For the purposes of this section, “regulated activity”—
- (a) has the meaning given in section 17(3), and
  - (b) includes activities specified in an order made by the Scottish Ministers for the purposes of this section.
- (7) An order under subsection (6) may specify only activities that are environmental activities within the meaning of section 17.

*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.<sup>40</sup>
- (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—

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- (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 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.

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#### **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),
  - (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.

#### **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
  - (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.

*Offences relating to supply of carrier bags: fixed penalty notices*

#### **43 Offences relating to supply of carrier bags: fixed penalty notices**

(1) The Climate Change (Scotland) Act 2009 is amended as follows.

(2) After section 88 insert—

*“Carrier bag offences: fixed penalty notices*

##### **88A Offences relating to supply of carrier bags: fixed penalty notices**

- (1) A person authorised for the purpose of this section by an enforcement authority may give a person a fixed penalty notice if the person so authorised has reason to believe that the person to whom the notice is given has committed a relevant offence.
- (2) In subsection (1), “relevant offence” means an offence provided for in regulations made under section 88.
- (3) The Scottish Ministers may by regulations make further provision about fixed penalty notices under subsection (1).
- (4) Subject to section 89, the regulations may in particular include provision about—
  - (a) the enforcement authority in relation to the regulations; and
  - (b) the functions of that authority in relation to fixed penalty notices.
- (5) Schedule 1A makes further provision about fixed penalties.”.

(3) After schedule 1 insert—

“SCHEDULE 1A  
*(introduced by section 88A(5))*  
FIXED PENALTIES

*Preliminary*

1 In this schedule, unless the context otherwise requires—

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“enforcement authority” means the enforcement authority provided for in the regulations;

“notice” means a fixed penalty notice given under section 88A(1);

“the offence” means the offence to which the notice relates;

“prescribed” means prescribed by the regulations;

“the regulations” means regulations under section 88A(3).

*Content of fixed penalty notice*

- 2 (1) A notice must give reasonable particulars of the circumstances alleged to constitute the offence.
- (2) A notice must also contain the following information—
- (a) the amount of the fixed penalty;
  - (b) the payment deadline;
  - (c) the discounted amount and the discounted payment deadline;
  - (d) the name of—
    - (i) the enforcement authority to which payment should be made; or
    - (ii) a person acting on behalf of the enforcement authority to whom payment should be made;
  - (e) the address at which payment should be made; and
  - (f) the method by which payment should be made.
- (3) A notice given to a person must state that—
- (a) any liability to conviction of the offence is discharged if the person makes payment of—
    - (i) the fixed penalty before the payment deadline; or
    - (ii) the discounted amount before the discounted payment deadline;
  - (b) the payment of a fixed penalty is not a conviction nor may it be recorded as such;
  - (c) no proceedings may be commenced against the person in respect of the offence unless the payment deadline has passed and the discounted amount or fixed penalty has not been paid;
  - (d) the person has the right to make representations as mentioned in paragraph 8.

*Period in which notice can be given*

- 3 A notice may not be given after such time relating to the offence as may be prescribed.

*Amount of penalty*

- 4 (1) The amount of the fixed penalty, and the discounted amount, are such amounts as may be prescribed.
- (2) The maximum amount of the fixed penalty that may be prescribed is an amount equal to level 2 on the standard scale (within the meaning of section 225(1) of the Criminal Procedure (Scotland) Act 1995).

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- (3) The discounted amount prescribed must be less than the maximum amount of the fixed penalty.

#### *Deadlines for payment*

- 5 (1) The payment deadline is the first working day occurring at least 28 days after the day on which the notice is given.
- (2) But the enforcement authority may extend the payment deadline in any particular case after the notice is given if it considers it appropriate to do so.
- (3) The discounted payment deadline is the first working day occurring at least 14 days after the day on which notice is given.
- (4) But the enforcement authority may extend the discounted payment deadline in any particular case after the notice is given if it considers it appropriate to do so.
- (5) On extending the payment deadline under sub-paragraph (2), or the discounted payment deadline under sub-paragraph (4), the enforcement authority must notify the recipient of the notice.
- (6) In this paragraph, “working day” means any day other than a Saturday, a Sunday, Christmas Day or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland.

#### *Method of payment*

- 6 The fixed penalty (and the discounted payment amount) is payable—
  - (a) to the enforcement authority or the person acting on its behalf specified in the notice;
  - (b) at the address specified in the notice; and
  - (c) by the method specified in the notice.

#### *Restriction on proceedings and effect of payment*

- 7 (1) The earliest date that proceedings for the offence may be commenced is the day after the payment deadline.
- (2) But no such proceedings may be commenced against a person if—
  - (a) the person makes payment of the discounted amount on or before the discounted payment deadline (or that deadline as extended under paragraph 5(4)); or
  - (b) the person makes payment of the fixed penalty on or before the payment deadline (or that deadline as extended under paragraph 5(2)).
- (3) In proceedings for the offence, a certificate which—
  - (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the enforcement authority; and

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(b) states that payment of an amount specified in the certificate was, or was not, received by a date so specified,

is sufficient evidence of the facts stated.

(4) Where the enforcement authority is a local authority, the reference to a person having responsibility for the financial affairs of the enforcement authority in sub-paragraph (3)(a) is to be read as a reference to the person who has, as respects the local authority, the responsibility mentioned in section 95 of the Local Government (Scotland) Act 1973 (financial administration).

*Withdrawal of fixed penalty notice*

8 (1) A recipient of a notice may make representations to the enforcement authority as to why the notice ought not to have been given.

(2) If, having considered any representations under sub-paragraph (1), the enforcement authority considers that the notice ought not to have been given, it may give to the person a notice withdrawing the notice.

(3) Where a notice under sub-paragraph (2) is given—

(a) the enforcement authority must repay any amount which has been paid in pursuance of the fixed penalty notice; and

(b) no proceedings may be commenced against the person for the offence.

*Effect of prosecution on fixed penalty notice*

9 Where proceedings for an offence in respect of which a notice has been given are commenced, the notice is to be treated as withdrawn.

*General and supplemental*

10 The regulations may make provision about—

(a) the application by enforcement authorities of payments received under this schedule;

(b) the keeping of accounts, and the preparation and publication of statements of account, in relation to such payments.

11 (1) The regulations may prescribe—

(a) the form of notices including notices under paragraph 8(2);

(b) the circumstances in which notices may not be given; and

(c) the method by which fixed penalties may be paid.

(2) The regulations may modify sub-paragraphs (1) and (3) of paragraph 5 so as to substitute a different deadline for the deadline for the time being specified there.

12 The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.”.



*Publicity and remediation orders: appeals by prosecutor*

**44 Orders under sections 36 and 41: prosecutor’s right of appeal**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended in accordance with this section.
- (2) In section 108 (Lord Advocate’s rights of appeal against disposal)—
  - (a) in subsection (1), after paragraph (ca) insert—
    - “(cb) a decision under section 36(2) of the Regulatory Reform (Scotland) Act 2014 not to make a publicity order;
    - (cc) a decision under section 41(2) of that Act not to make a remediation order;”
  - (b) in subsection (2)(b)(ii), for the words “or (ca)” substitute “, (ca), (cb) or (cc)”.
- (3) In section 175 (right of appeal from summary proceedings)—
  - (a) in subsection (4), after paragraph (ca) insert—
    - “(cb) a decision under section 36(2) of the Regulatory Reform (Scotland) Act 2014 not to make a publicity order;
    - (cc) a decision under section 41(2) of that Act not to make a remediation order;”
  - (b) in subsection (4A)(b)(ii), for “or (ca)” substitute “, (ca), (cb) or (cc)”.

*Contaminated land and special sites*

**45 Contaminated land and special sites**

- (1) The Environmental Protection Act 1990 is amended as follows.
- (2) In section 78F (determination of appropriate person to bear responsibility for remediation), after subsection (5) insert—

“(5A) But where the contaminated land is owned or occupied by the Crown by virtue of its having vested as *bona vacantia* in the Crown, or its having fallen to the Crown as *ultimus haeres*, the Crown is not an appropriate person under subsection (4) or (5) for the purposes of this Part.”
- (3) After section 78Q insert—

**“78QA Land no longer considered to be contaminated**

- (1) Subsection (2) applies where—
  - (a) a local authority has given notice under section 78B above that land in its area has been identified as contaminated land;
  - (b) the land is not designated as a special site by virtue of section 78C(7) or 78D(6) above; and
  - (c) the local authority is satisfied that the land is no longer contaminated land.
- (2) The local authority may give notice (a “non-contamination notice”) that the land is no longer contaminated land to—
  - (a) the appropriate Agency;

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- (b) the owner of the land;
  - (c) any person who appears to the local authority to be in occupation of the land;
  - (d) each person who appears to the authority to be an appropriate person.
- (3) Where a non-contamination notice is given in respect of land—
- (a) the notice mentioned in subsection (1) above ceases to have effect (and accordingly the land is no longer identified as contaminated land for the purposes of this Part);
  - (b) no remediation notice may be served in respect of the land;
  - (c) any remediation notice in force in respect of the land at the time the non-contamination notice is given ceases to have effect (except to the extent that the non-contamination notice provides otherwise); and
  - (d) no proceedings may be begun against a person for an offence under section 78M(1) above in respect of such a remediation notice except in relation to a provision of the notice which continues to have effect by virtue of paragraph (c) above.
- (4) A non-contamination notice shall not prevent the land, or any of the land, to which the notice relates being identified as contaminated land on a subsequent occasion.
- (5) Where land, or any of the land, to which a non-contamination notice relates is subsequently identified as contaminated land, or is subsequently designated as a special site by virtue of section 78C(7) or 78D(6), subsection (3)(b) above does not prevent a remediation notice being served in respect of the land.
- (6) Where a local authority gives a non-contamination notice, it must keep (in such form as it thinks fit) a record of—
- (a) details of the land to which the notice relates;
  - (b) its reasons for giving the notice; and
  - (c) the date of—
    - (i) the notice mentioned in subsection (1) above;
    - (ii) service of the non-contamination notice.
- (7) Subsection (8) of section 78R below applies to records kept under subsection (6) above as it applies to registers maintained by enforcing authorities under that section; and for that purpose, the reference to entries is to be read as if it were a reference to information in such records.
- (8) In performing its function under subsection (2) above, a local authority must have regard to any guidance issued by the Scottish Ministers in accordance with section 78YA below.
- (9) In this section, references to land in respect of which a non-contamination notice is given include references to part of that land.”.
- (4) After section 78T insert—

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**“78TA Registers: removal of information about land designated as special site**

- (1) Subsection (2) applies where a local authority has entered in a register maintained under section 78R above particulars of or relating to notices mentioned in paragraph (e) or (f) of subsection (1) of that section.
- (2) The local authority may remove the particulars from the register.
- (3) Particulars may be removed under subsection (2) above only if—
  - (a) the Scottish Environment Protection Agency has given the local authority a notice under section 78Q(4) above that the land to which the notices relate is no longer land which is required to be designated as a special site; and
  - (b) the date specified in the notice given under that section has passed.
- (4) Where a local authority removes particulars from a register under subsection (2) above, it must keep (in such form as it thinks fit) a record of—
  - (a) the particulars that have been removed;
  - (b) its reasons for removing them; and
  - (c) the date on which the particulars—
    - (i) were originally entered in the register; and
    - (ii) were removed.
- (5) Subsection (8) of section 78R above applies to records kept under subsection (4) above as it applies to registers maintained by enforcing authorities under that section; and for that purpose, the reference to entries is to be read as if it were a reference to information in such records.
- (6) In performing its functions under subsection (4) above, a local authority must have regard to any guidance issued by the Scottish Ministers in accordance with section 78YA below.
- (7) Where a local authority removes particulars from a register under subsection (2) above, it must give notice of such removal to—
  - (a) the Scottish Environment Protection Agency;
  - (b) any person who is the owner of land designated as a special site by a notice to which the particulars relate;
  - (c) any person who appears to the local authority to be in occupation of the whole or any part of that land;
  - (d) each person—
    - (i) who appears to the Scottish Environment Protection Agency to be an appropriate person in relation to that land; and
    - (ii) in respect of whom details have been given by the Scottish Environment Protection Agency to the local authority sufficient to enable notice of such removal to be given; and
  - (e) each person who appears to the local authority to be an appropriate person in relation to that land.

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### **78TB Effect of removal of information from register**

- (1) Where a local authority removes particulars from a register under section 78TA(2) above—
  - (a) any remediation notice relating to the land ceases to have effect; and
  - (b) no proceedings may be begun against a person for an offence under section 78M(1) above in respect of any remediation notice relating to the land.
- (2) In subsection (1), “the land” means land designated as a special site by a notice to which the particulars mentioned in that subsection relate.”.
- (5) In section 78X (supplementary provisions), in subsection (4), after paragraph (f) insert—
  - “(g) in relation to property and rights that have vested as *bona vacantia* in the Crown, or that have fallen to the Crown as *ultimus haeres*, the Queen’s and Lord Treasurer’s Remembrancer.”.
- (6) In section 78YA (supplementary provisions with respect to guidance by the Scottish Ministers), in subsection (4A), after “draft” where it second occurs insert “, and a draft of any guidance referred to in section 78QA(8) or section 78TA(6) above.”.

### *Amendment of powers under section 108 of Environment Act 1995*

#### **46 Amendment of powers under section 108 of Environment Act 1995**

- (1) The Environment Act 1995 is amended as follows.
- (2) In section 108 (powers of enforcing authorities and persons authorised by them)—
  - (a) in subsection (1)—
    - (i) the word “or” immediately following paragraph (b) is repealed,
    - (ii) after paragraph (c) insert—
      - “(d) of determining whether any of the following offences are being or have been committed—
        - (i) an offence under section 110 of this Act;
        - (ii) an offence under section 40(1) of the Regulatory Reform (Scotland) Act 2014 (offences relating to significant environmental harm);
        - (iii) an offence under section 293(2) of the Criminal Procedure (Scotland) Act 1995 (statutory offences: art and part and aiding or abetting) as it applies in relation to an offence mentioned in sub-paragraph (i) or (ii) above;
        - (iv) an attempt, conspiracy or incitement to commit an offence mentioned in sub-paragraph (i) or (ii) above; or
    - (e) in a case only where the person is authorised by SEPA, of determining whether, and if so to what

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extent, any financial benefit has accrued or is likely to accrue to a person in connection with an offence mentioned in subsection (1A) below which the authorised person reasonably believes is being or has been committed.”,

(b) after subsection (1) insert—

“(1A) The offence is a relevant offence (within the meaning of section 53 of the Regulatory Reform (Scotland) Act 2014) for the purpose of provision made under section 24, or of section 35, of that Act.”,

(c) in subsection (4)—

(i) in paragraph (h), after sub-paragraph (iii) insert—

“(iv) to ensure that it is available for use as evidence in any proceedings for an offence under section 40(1) of the Regulatory Reform (Scotland) Act 2014;”,

(ii) in paragraph (j), the words from “to answer” to the end become sub-paragraph (i) of that paragraph, and after that sub-paragraph insert “; and

(ii) without prejudice to the generality of paragraph (c) above, to attend at such place and at such reasonable time as the authorised person may specify to answer those questions and sign such a declaration;”,

(iii) after paragraph (j) insert—

“(ja) in a case only where he is authorised under subsection (1) or (2) above by SEPA, and without prejudice to the generality of paragraphs (c) and (j) above, to require any person whom he has reasonable cause to believe to be able to give any information relevant to an examination or investigation under paragraph (c) above, to provide the person’s name, address and date of birth;”,

(iv) after paragraph (k) insert—

“(ka) as regards any premises which by virtue of an authorisation from SEPA he has power to enter, to search the premises and seize and remove any documents found in or on the premises which he has reasonable cause to believe—

(i) may be required as evidence for the purpose of proceedings relating to an offence under any of the pollution control enactments, or under section 40(1) of the Regulatory Reform (Scotland) Act 2014, which he reasonably believes is being or has been committed; or

(ii) may assist in determining whether, and if so to what extent, any financial benefit has accrued or is likely to accrue as mentioned in subsection (1)(e) above;”,

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- (d) in subsection (5), after “with” insert “, or whether an offence under section 40(1) of the Regulatory Reform (Scotland) Act 2014 is being, or has been, committed,”,
  - (e) in subsection (6), paragraph (a) and the word “and” immediately following it are repealed,
  - (f) after subsection (7) insert—
    - “(7A) An authorised person may not exercise the power in subsection (4) (ka) above to seize and remove documents except under the authority of a warrant by virtue of Schedule 18 to this Act.
    - (7B) Section 108A applies where documents are removed under that power.
    - (7C) Subsections (7D) and (7E) apply where a document removed under that power contains information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings.
    - (7D) The information may not be used—
      - (a) in evidence for the purpose of proceedings mentioned in paragraph (ka)(i) of subsection (4) above against a person who would be entitled to make such a claim in relation to the document; or
      - (b) to determine whether any financial benefit has accrued or is likely to accrue as mentioned in subsection (1)(e) above.
    - (7E) The document must be returned to the premises from which it was removed, or to the person who had possession or control of it immediately before it was removed, as soon as reasonably practicable after the information is identified as information described in subsection (7C) above (but the authorised person may retain, or take copies of, any other information contained in the document).”
  - (g) in subsection (12), at the end add “, except in a case where the proceedings relate to—
    - (a) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations), or
    - (b) another offence where in giving evidence the person makes a statement inconsistent with the answer.”,
  - (h) in subsection (15)—
    - (i) after the definition of “authorised person” insert—
      - ““document” includes any thing in which information of any description is recorded (by any means) and any part of such a thing;”
    - (ii) in the definition of “pollution control functions”, paragraph (a) is repealed.
- (3) After section 108, insert—

### **“108A Procedure where documents removed**

- (1) An authorised person (within the meaning of subsection (15) of section 108 of this Act) who removes any documents under the power in subsection (4) (ka) of that section shall, if requested to do so by a person mentioned in subsection (2) below, provide that person with a record of what the authorised person removed.
- (2) The persons are—
  - (a) a person who was the occupier of any premises from which the documents were removed at the time of their removal;
  - (b) a person who had possession or control of the documents immediately before they were removed.
- (3) The authorised person shall provide the record within a reasonable time of the request for it.
- (4) A person who had possession or control of documents immediately before they were removed may apply to SEPA—
  - (a) for access to the documents; or
  - (b) for a copy of them.
- (5) SEPA shall—
  - (a) allow the applicant supervised access to the documents for the purpose of copying them or information contained in them; or
  - (b) copy the documents or information contained in them (or cause the documents or information to be copied) and provide the applicant with such copies within a reasonable time of the application.
- (6) But SEPA need not comply with subsection (5) above where it has reasonable grounds for believing that to do so might prejudice—
  - (a) any investigation for a purpose mentioned in paragraph (a), (d) or (e) of subsection (1) of section 108 of this Act; or
  - (b) any criminal proceedings which may be brought as a result of any such investigation.
- (7) In subsection (5) above, “supervised access” means access under the supervision of a person approved by SEPA.
- (8) A person who claims that an authorised person or SEPA has failed to comply with the requirements of subsection (1), (3) or (5) above may apply to the sheriff for an order under subsection (10) below.
- (9) An application under subsection (8) above—
  - (a) relating to a failure to comply with the requirements of subsection (1) or (3) above may be made only by a person who is entitled to make a request under subsection (1) above;
  - (b) relating to a failure to comply with subsection (5) above may be made only by a person who had possession or control of the documents immediately before they were removed.
- (10) The sheriff may, if satisfied that the authorised person or SEPA has failed to comply with the requirements of subsection (1), (3) or (5) above, order the

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person, or as the case may SEPA, to comply with the requirements within such time and in such manner as may be specified in the order.”.

(4) In Schedule 18 (supplemental provisions with respect to powers of entry)—

(a) in paragraph 2—

(i) after sub-paragraph (1) insert—

“(1A) If it is shown to the satisfaction of the sheriff or a justice of the peace, on sworn information in writing, that there are reasonable grounds for the exercise in relation to any documents of a power in section 108(4)(ka) of this Act, the sheriff or justice of the peace may by warrant authorise SEPA to designate a person who shall be authorised to exercise the power in relation to the documents in accordance with the warrant and, if need be, by force.”,

(ii) for sub-paragraph (3) substitute—

“(3) A warrant under this Schedule in respect of the power in section 108(6) of this Act to enter any premises used for residential purposes shall not be issued unless the sheriff or justice of the peace is satisfied that such entry is necessary for any purpose for which the power is proposed to be exercised.”,

(iii) after sub-paragraph (4) add—

“(5) A sheriff may grant a warrant under this Schedule in relation to premises situated in an area of Scotland even though the area is outside the territorial jurisdiction of that sheriff; and any such warrant may, without being backed or endorsed by another sheriff, be executed throughout Scotland in the same way as it may be executed within the sheriffdom of the sheriff who granted it.”,

(b) in paragraph 3—

(i) after “shall” insert “, if so required,”,

(ii) the words “designation and other” are repealed.

*Authorisations relating to waste management: offences by partnerships*

#### **47 Carriers of controlled waste: offences by partnerships affecting registration**

In section 3(5) of the Control of Pollution (Amendment) Act 1989 (restrictions on powers under section 2)—

(a) after paragraph (a), insert—

“(aa) a partnership has been convicted of a prescribed offence committed at a time when the applicant or registered carrier was a member of that partnership;”,

(b) the word “or” immediately following paragraph (b) is repealed,

(c) after paragraph (b), insert—

“(ba) where the applicant or registered carrier is a partnership, a person who is a member of that partnership—

(i) has been convicted of a prescribed offence;



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- (ii) was a member of another partnership at a time when a prescribed offence of which that other partnership has been convicted was committed; or
  - (iii) was a director, manager, secretary, or other similar officer of a body corporate at a time when a prescribed offence of which that body corporate has been convicted was committed; or”
- (d) in paragraph (c)—
  - (i) the word “or” immediately following sub-paragraph (i) is repealed,
  - (ii) after sub-paragraph (i), insert—
    - “(ia) was a member of a partnership at a time when a prescribed offence of which that partnership has been convicted was committed; or”
  - (iii) in sub-paragraph (ii), for the word “for” substitute “of”.

#### **48 Waste management licences: offences by partnerships**

In section 74(7) of the Environmental Protection Act 1990 (meaning of “fit and proper person”)—

- (a) after paragraph (a), insert—
  - “(aa) a partnership has been convicted of a relevant offence committed when the holder or, as the case may be, proposed holder of the licence was a member of that partnership;”
- (b) the word “or” immediately following paragraph (b) is repealed,
- (c) after paragraph (b), insert—
  - “(ba) where the holder or, as the case may be, proposed holder of the licence is a partnership, a person who is a member of that partnership—
    - (i) has been convicted of a relevant offence;
    - (ii) was a member of another partnership at a time when a relevant offence of which that other partnership has been convicted was committed; or
    - (iii) was a director, manager, secretary, or other similar officer of a body corporate at a time when a relevant offence of which that body corporate has been convicted was committed; or”
- (d) in paragraph (c)—
  - (i) the word “or” immediately following sub-paragraph (i) is repealed,
  - (ii) after sub-paragraph (i), insert—
    - “(ia) was a member of a partnership at a time when a relevant offence of which that partnership has been convicted was committed; or”
  - (iii) in sub-paragraph (ii), for the word “for” substitute “of”.

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*Air quality assessments*

**49 Duty of local authorities in relation to air quality assessments etc.**

In section 84 of the Environment Act 1995 (duties of local authorities in relation to designated areas)—

- (a) subsection (1) is repealed,
- (b) in subsection (2), for the words from the beginning to “to” where it fourth occurs, substitute “Where an order under section 83 above comes into operation, the local authority which made the order shall”.

*Smoke control areas: fuels and fireplaces*

**50 Smoke control areas: authorised fuels and exempt fireplaces**

- (1) The Clean Air Act 1993 is amended as follows.
- (2) In section 20 (offence of emitting smoke in smoke control area where emission caused by use of fuel other than authorised fuel)—
  - (a) after subsection (5) insert—
    - “(5A) In this Part, “authorised fuel” means a fuel included in a list of authorised fuels kept by the Scottish Ministers for the purposes of this Part.
    - (5B) The Scottish Ministers must—
      - (a) publish the list of authorised fuels; and
      - (b) publish a revised copy of the list as soon as is reasonably practicable after any change is made to it.
    - (5C) The list must be published in such manner as the Scottish Ministers consider appropriate.”,
  - (b) in subsection (6), for “In” substitute “Except as provided in subsection (5A), in”.
- (3) In section 21 (power by order to exempt certain fireplaces)—
  - (a) the existing text becomes subsection (5); and for the word “The” at the beginning of that subsection substitute “Except where subsection (1) applies, the”.
  - (b) before that subsection insert—
    - “(1) For the purposes of this Part, the Scottish Ministers may exempt any class or description of fireplace from the provisions of section 20 (prohibition of smoke emissions in smoke control areas) if they are satisfied that such fireplaces can be used for burning fuel other than authorised fuels without producing any smoke or a substantial quantity of smoke.
    - (2) An exemption under subsection (1) may be made subject to such conditions as the Scottish Ministers consider appropriate.
    - (3) The Scottish Ministers must—

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- (a) publish a list of those classes or descriptions of fireplace that are exempt under subsection (1), including details of any conditions to which an exemption is subject; and
  - (b) publish a revised copy of the list as soon as is reasonably practicable after any change is made to the classes or descriptions of fireplace that are so exempt or to the conditions to which an exemption is subject.
- (4) The list must be published in such manner as the Scottish Ministers consider appropriate.”.
- (4) In the title of section 21, the words “by order” are repealed.
- (5) In section 29 (interpretation of Part 3), in the definition of “authorised fuel”, for “20(6)” substitute “20”.