



# 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.<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—
  - (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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*Changes to legislation: There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014, Section 40. (See end of Document for details)*

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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.

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**Commencement Information**

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

**Changes to legislation:**

There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014, Section 40.