
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

The Water Environment (Controlled Activities) (Scotland) Regulations 2011

PART VII

Offences

Offences

44.—(1) It is an offence for a person to—

- (a) contravene regulation 4;
- (b) fail to comply with or contravene a general binding rule;
- (c) fail to comply with or contravene a registration (including any condition imposed);
- (d) fail to comply with or contravene a water use licence (including any condition imposed);
- (e) obstruct an authorised person in the exercise of that person's powers under regulation 31(4) and Schedule 6;
- (f) fail to comply with any requirement imposed in the exercise of that person's powers under regulation 31(4) and Schedule 6;
- (g) fail or refuse to provide facilities or assistance or any information or to permit any inspection reasonably required by an authorised person in the exercise of that person's powers or duties under or by virtue of regulation 31(4) and Schedule 6;
- (h) prevent any other person from appearing before an authorised person, or answering any question to which an authorised person may require an answer, pursuant to regulation 31(4) and Schedule 6;
- (i) pretend to be a person authorised in accordance with regulation 31(4);
- (j) fail to comply with the requirements of a notice issued under regulation 32(2);
- (k) fail to comply with the requirements of an information notice under regulation 36(2);
- (l) make a statement which that person knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, if the statement is made—
 - (i) in purported compliance with a requirement to furnish any information imposed by or under any provision of these Regulations; or
 - (ii) for the purpose of obtaining an authorisation issued under these Regulations to that or any other person, or the variation, transfer or surrender of an authorisation;
- (m) intentionally make a false entry in any record required to be kept as a condition of an authorisation;
- (n) with intent to deceive, forge or use a document issued or authorised to be issued under the condition of an authorisation or required for any purpose under a condition of such

an authorisation or to make or have in that person's possession a document so closely resembling any such document so as to be likely to deceive; or

- (o) cause or permit any other person to commit an offence under sub-paragraphs (a) to (n) above.
- (2) A person guilty of an offence under paragraph (1) is liable—
- (a) on summary conviction—
 - (i) to a fine not exceeding £40,000 or to imprisonment for a term not exceeding 12 months, or to both; and
 - (ii) in the case of a continuing offence, to a further fine not exceeding £250 for every day during which the offence is continued after conviction;
 - (b) on conviction on indictment—
 - (i) to a fine or to imprisonment for a term not exceeding 5 years, or to both; and
 - (ii) in the case of a continuing offence to a further fine not exceeding £1,000 for every day during which the offence is continued after conviction.

Offences by bodies corporate

- 45.**—(1) If an offence under these Regulations is committed by—
- (a) a body corporate (other than a limited liability partnership) and is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity;
 - (b) a limited liability partnership and is proved to have been committed with the consent or connivance of, or have been attributable to any neglect on the part of, any member of that partnership or person who was purporting to act as such;
 - (c) a Scottish partnership (other than a limited liability partnership) and is proved to have been committed with the consent or connivance of, or have been attributable to neglect on the part of, any partner or a person who was purporting to act as such,

that person as well as the body corporate, the limited liability partnership or the partnership, as the case may be, is guilty of that offence and is liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate (other than the affairs of a limited liability partnership) are managed by its members, paragraph (1) applies in relation to the acts or defaults of a member in connection with the functions of management of that member as if that member were a director of the body corporate.

Offences — acts or default of third person

46. If the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this regulation whether or not proceedings for the offence are taken against the first-mentioned person.

Admissibility of evidence

- 47.**—(1) It is admissible as evidence that that condition has not been observed if—
- (a) by virtue of a condition of an authorisation, an entry is required to be made in any record as to the observance of any condition of the authorisation; and

(b) the entry has not been made.

(2) Information provided or obtained pursuant to or by virtue of a condition of an authorisation including information so provided, obtained or recorded, by means of any apparatus, will be admissible in evidence in any proceedings, whether against the person subject to the condition, or any other person.

(3) For the purposes of paragraph (2), apparatus will be presumed in any proceedings to register or record accurately, unless the contrary is shown, or the authorisation otherwise provides.

Defence to principal offences

48. A person will not be guilty of an offence under regulation 44(1)(a) to (d), (j) or (o) if—

- (a) the contravention is a result of—
 - (i) an accident which could not reasonably have been foreseen;
 - (ii) natural causes or *force majeure* which are exceptional or could not reasonably have been foreseen; or
 - (iii) an act or omission by a category 1 or 2 responder that is reasonably necessary to protect people, property or the environment from imminent risk of serious harm;
- (b) all practicable steps are taken to prevent deterioration of the water environment—
- (c) all practicable steps are taken as soon as is reasonably practicable to restore the water environment to its condition prior to the contravention; and
- (d) particulars of the contravention are furnished to SEPA as soon as practicable after it occurs.

Power of court to order offence to be remedied

49.—(1) If—

- (a) a person is convicted of an offence under regulation 44(1)(a) to (d), (j) or (o) in respect of any controlled activity which has had an adverse impact on the water environment; and
- (b) it appears to the court that it is in the power of that person to mitigate or remedy that adverse impact,

the court may, in addition to, or instead of, imposing any punishment, order that person, within such time as may be fixed by the order of the court, to take such steps as may be specified in that order for remedying those matters.

(2) Before making such an order, the court must have regard to any representations by SEPA as to the steps required to mitigate or remedy the adverse impact.

(3) The time fixed by an order of the court under paragraph (1) may be extended or further extended by a further order of the court on an application made before the end of the time originally fixed or extended under this paragraph, as the case may be.

(4) As long as an order under this regulation is in force, the convicted person will not be liable under regulation 44(1) as regards the matters in respect of which steps require to be taken in accordance with that order.