
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2012 No.

**The Pollution Prevention and
Control (Scotland) Regulations 2012**

PART X

PROVISION AS TO OFFENCES

Offences

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

- (a) to contravene regulation 11,
- (b) to fail to comply with or to contravene a condition of a permit,
- (c) to fail to comply with regulation 45(1),
- (d) to fail to comply with the requirements of—
 - (i) an enforcement notice,
 - (ii) a suspension notice, or
 - (iii) a closure notice under regulation 18(1) of the Landfill Regulations,
- (e) to fail, without reasonable excuse, to comply with any requirement imposed by a notice under regulation 63(2),
- (f) to fail, without reasonable excuse, to comply with regulation 52,
- (g) to 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, where 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 the Landfill Regulations, or
 - (ii) for the purpose of obtaining the grant of a permit issued under these Regulations to that person or any other person, or
 - (iii) for the purpose of obtaining the variation, transfer or surrender of a permit,
- (h) intentionally to make a false entry in any record required to be kept under a condition of a permit,
- (i) with intent to deceive, to forge or use a document issued or authorised to be issued under a condition of a permit, or required for any purpose under such a condition, or to make or possess a document so closely resembling any such document as to be likely to deceive,
- (j) to fail to comply with an order made by a court under regulation 70,
- (k) to fail to comply with Part 3 of Schedule 2.

(2) A person guilty of an offence under sub-paragraph (a), (b), (d), (f) or (j) of paragraph (1) is liable—

- (a) on summary conviction, to a fine not exceeding £40,000 or to imprisonment for a term not exceeding twelve months, or to both,
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding five years, or to both.

(3) A person guilty of an offence under sub-paragraph (c), (e), (g), (h), (i) or (k) of paragraph (1) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum,
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

(4) Where an offence under this regulation is committed by a body corporate or a 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—

- (a) any director, manager, secretary or other similar officer of the body corporate, or
- (b) a person who was purporting to act in any such capacity (or, in the case of a partnership, a partner or a person who was purporting to act as such),

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

(5) Where the affairs of a body corporate are managed by its members, paragraph (4) 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.

(6) Where the commission by any person of an offence under this regulation 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 paragraph whether or not proceedings for the offence are taken against the first-mentioned person.

Courts: enforcement

68. SEPA may, if it considers that proceedings for an offence under regulation 67(1)(d) would not afford an effective remedy against a person who has failed to comply an enforcement notice or a suspension notice, take proceedings in any court of competent jurisdiction for the purpose of securing compliance with such a notice.

Courts: admissibility of evidence

69.—(1) A statement by an operator made to SEPA for the purposes of complying with regulation 52 may only be used in a prosecution for an offence under regulation 67(1)(f) where in giving evidence the operator makes a statement inconsistent with it.

(2) Where—

- (a) by virtue of a condition of a permit, an entry is required to be made in any record as to the observance of any condition of the permit, and
- (b) the entry has not been made,

that fact is admissible as evidence that that condition has not been observed.

Courts: power to order cause of offence to be remedied

70.—(1) Where a person is convicted of an offence under regulation 67(1)(a), (b) or (d) in respect of any matters which appear to the court to be matters which it is in the power of that person to remedy, 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) 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 as originally fixed or extended under this paragraph, as the case may be.

(3) Where a person is ordered under paragraph (1) to remedy any matter, that person is not liable under regulation 67 in respect of the matter if it continues during the time fixed by the order of the court or any further time allowed under paragraph (2).