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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2018 No.**

**The Environmental Authorisations (Scotland) Regulations 2018**

**PART 15**

Provisions relating to offences

**Offences**

- 69.**—(1) A person commits an offence if the person—
- (a) contravenes regulation 7;
  - (b) is an authorised person and fails to comply with regulation 8;
  - (c) fails to comply with or contravenes a general binding rule;
  - (d) fails to comply with or contravenes a condition of a registration;
  - (e) fails to comply with or contravenes a condition of a permit;
  - (f) fails to comply with the requirements of a regulatory notice;
  - (g) fails to comply with the requirements of a revocation notice;
  - (h) fails to comply, without reasonable excuse, with the requirements of a notice issued under regulation 37(1) (power to require provision of information);
  - (i) fails to comply with an order made by a court under regulation 75;
  - (j) makes a statement which that person knows to be false or misleading in a material particular, or recklessly makes a statement which is false or misleading in a material particular, if the statement is made—
    - (i) in purported compliance with a requirement by an enforcing officer in exercise of that officer's powers or duties;
    - (ii) in purported compliance with a requirement imposed by or under these Regulations;or
  - (iii) for the purpose of obtaining an authorisation, or securing the variation, transfer or surrender of an authorisation;
  - (k) intentionally makes a false entry in any record required to be kept—
    - (i) as a condition of an authorisation; or
    - (ii) in compliance with a requirement imposed by or under these Regulations;
  - (l) with intent to deceive, forges or uses an authorisation or a document issued or authorised to be issued under a condition of a registration or permit or required for any purpose under a condition of such a registration or permit or makes or possesses a document so closely resembling any such authorisation or document so as to be likely to deceive; or
  - (m) causes or permits any other person to commit an offence under sub-paragraphs (a) to (k).
- (2) A person commits an offence if the person—

- (a) refuses, wilfully neglects, or fails without reasonable excuse to attend a hearing which they are required to attend by a notice under paragraph 23 of schedule 4 to give evidence;
  - (b) wilfully alters, suppresses, conceals, destroys or refuses to produce any book or other document which the person is required, or is liable to be required, to produce by a notice under paragraph 23 of schedule 4; or
  - (c) causes or permits any other person to commit an offence under sub-paragraph (a) or (b).
- (3) A person who commits 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.
- (4) A person who commits an offence under paragraph (2) is liable on summary conviction to a fine not exceeding level 2 on the standard scale or to imprisonment for a term not exceeding three months, or to both.

### **Offences by bodies corporate**

#### **70.—(1) Where—**

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association; and
  - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
    - (i) a relevant individual; or
    - (ii) an individual purporting to act in the capacity of a relevant individual,
- the individual as well as the body corporate, Scottish partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.

#### **(2) In paragraph (1), “relevant individual” means—**

- (a) in relation to a body corporate—
  - (i) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity;
  - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a Scottish partnership, a partner;
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

### **Offences — acts or default of third person**

**71.** Where 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.

### **Offences – more than one authorised person**

- 72.** Where there is more than one person who is the authorised person in relation to an activity—
- (a) each person is jointly and severally liable for acts or omissions arising in respect of the activity during the period in which that person is authorised; and
  - (b) each person may be charged with and convicted of an offence under these Regulations whether or not proceedings for the offence are taken against any of the other persons who are authorised in relation to the activity.

### **Offences – defences**

**73.—(1)** A person does not commit an offence under regulation 69(1)(a) to (e) or (m) where all of the following apply—

- (a) either—
  - (i) the contravention, failure or (as the case may be) causing or permitting was necessary to avoid, prevent or limit an imminent risk of serious harm to human health in circumstances which are the result of natural causes which are exceptional and could not reasonably have been foreseen; or
  - (ii) the person was acting in their capacity as a Category 1 responder or a Category 2 responder and the contravention was necessary to protect people, the environment or property from the imminent risk of serious harm;
- (b) the person has taken all practicable steps to minimise environmental harm;
- (c) the person has taken all practicable steps as soon as was reasonably practicable to restore the environment to its condition prior to the contravention, failure or (as the case may be) causing or permitting; and
- (d) the person provided particulars of the contravention, failure or (as the case may be) causing or permitting to SEPA as soon as practicable after it occurs.

(2) In this regulation, “Category 1 responder” and “Category 2 responder” have the same meanings as in section 3 of the Civil Contingencies Act 2004<sup>(1)</sup>.

### **Admissibility of evidence**

**74.—(1)** Where—

- (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,

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

(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, is 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 is presumed in any proceedings to register or record accurately, unless the contrary is shown, or the authorisation otherwise provides.

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(1) 2004 c.36.

## **Power of court to order offence to be remedied**

### **75.—(1) If—**

- (a) a person is convicted of an offence under regulation 69(1)(a) to (l) in respect of any regulated activity which has resulted in environmental harm; and
  - (b) it appears to the court that it is in the power of that person to mitigate or remedy that harm,
- the court may, in addition to or instead of imposing any punishment, order the person, within such time as may be fixed by the order of the court, to take such steps as may be specified in the order to remedy or mitigate the harm.
- (2) Before making such an order, the court must have regard to any representations by SEPA as to the steps required to remedy or mitigate the environmental harm.
- (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) Where a person is ordered under paragraph (1) to remedy any matter, the person is not liable under regulation 69 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 (3).