

POLICY NOTE

THE ENVIRONMENTAL REGULATION (RELEVANT OFFENCES) (SCOTLAND) ORDER 2014

SSI 2014/319

1. The above instrument is made in exercise of the powers conferred by sections 53 and 58(1)(a) of the Regulatory Reform (Scotland) Act 2014 (“the 2014 Act”) and all other powers enabling them to do so. The instrument is subject to the negative procedure.

Policy Objectives

2. The 2014 Act’s primary aim is to introduce various measures to improve the way regulation is developed and applied, creating more favourable business conditions in Scotland and delivering benefits for the environment.
3. Part 3 of the Act provides a simpler legislative framework so that the Scottish Environmental Protection Agency (SEPA) can be more transparent, accountable, proportionate, consistent and targeted in carrying out its regulatory functions. This will enable SEPA to better identify, and focus most effort on, the most important environmental risks and harms, ensuring more effective and efficient protection of the environment and reducing the regulatory burden on business. As part of this framework the Act introduces new powers and offences to address environmental crime, including the introduction of new enforcement powers for SEPA, additional sentencing powers for the criminal court, and expanding the operation of vicarious liability for certain environmental offences.
4. A number of sections of the Act depend on the concept of “relevant offences”. This Order lists offences which are to be considered “relevant offences” for the following sections of the Act:
 - **Section 34 – Compensation orders against persons convicted of relevant offences**
Section 34 of the 2014 Act provides that where a person is convicted of a relevant offence, a compensation order under subsection (1) of section 249 of the Criminal Procedure (Scotland) Act 1995 can be made. Section 34(2) provides that where a compensation order is made under section 34(1), loss or damage to the victim is taken to include any costs incurred or to be incurred by a relevant person in preventing, reducing, remediating or mitigating the effect of any harm to the environment resulting directly or indirectly from the offence or any other harm, loss, damage or adverse impacts resulting from the offence. Section 34(6) provides that “relevant person” means SEPA, a local authority or an owner or occupier of land.

- **Section 35 – Fines for relevant offences: courts to consider financial benefits**

Section 35 provides that where a person is convicted by a court of a relevant offence, and the court proposes to impose a fine in respect of the offence, the court must, in determining the amount of the fine, have particular regard to any financial benefit which has accrued or is likely to accrue to the person in consequence of the offence.

- **Section 36 – Power to order conviction etc. for offence to be publicised**

Section 36 provides that where a person is convicted by a court of a relevant offence, the court may, instead of or in addition to dealing with the person in any other way, make an order (a “publicity order”) requiring the person to publicise the fact that the person has been convicted of the offence, specified particulars of the offence and specified particulars of any sentence passed by the court in respect of the offence.

- **Section 38 – Vicarious Liability for certain offences by employees and agents**

Section 38 provides that where a person (“A”) commits a relevant offence while acting as the employee or agent of another person (“B”), B also commits the relevant offence and is liable to be proceeded against and punished accordingly.

- **Section 39 – Liability where activity carried out by arrangement with another**

Section 39 provides that where, in the course of carrying on a regulated activity, a person (“A”) commits a relevant offence while carrying on that activity for another person (“B”), and B manages or controls the carrying on of the regulated activity, B also commits the relevant offence and is liable to be proceeded against. Regulated activities are being specified in the Environmental Regulation (Liability where Activity Carried Out by Arrangement with Another) (Scotland) Order 2014, also coming into force on 31 December 2014.

5. Section 53 of the 2014 Act allows the Scottish Ministers to specify which offences constitute a “relevant offence” for the purposes of Part 3. Section 58(1)(a) allows the Scottish Ministers to specify different offences for different purposes so that, for example, a limited range of offences may be specified as a relevant offence for the purposes of the vicarious liability provisions at sections 38 and 39, with a wider range of offences specified in relation to compensation orders under section 34. This is designed to ensure the proportionate and appropriate use of particular enforcement powers.

Consultation

6. A public consultation paper, “Consultation on Proposals for an Integrated Framework of Environmental Regulation”, was published prior to the development and introduction of the Bill for the 2014 Act in May 2012. This closed in August 2012, and non-confidential responses and an analysis are available on the Scottish Government website ([Consultation Analysis](#)) ([Consultation Responses](#)).

7. The design and intent of SEPA's new enforcement powers and new court powers under the 2014 Act, including relevant offences, was also the subject of a separate consultation undertaken between July and October 2014. The consultation proposed listed "relevant offences" for the purposes of the above provisions from the 2014 Act. Non-confidential responses will be made available on the Scottish Government website. An analysis of these responses will also be published in due course.
8. In addition, informal consultation with stakeholders (including judicial bodies, regulated businesses, trade bodies and non-governmental organisations) was undertaken throughout the Bill process, and continues to be undertaken in relation to the implementation of the 2014 Act.

Impact Assessments

9. An Equality Impact Assessment (EQIA) was carried out prior to introduction of the Bill. No equality impacts were identified. A copy of this is available on the Scottish Government website ([EQIA](#)).

Financial Effects

10. A Business and Regulatory Impact Assessment (BRIA) was carried out prior to introduction of the Bill. A copy of this is available on the Scottish Government website ([BRIA](#)).

Environment and Forestry Directorate
Scottish Government
November 2014