

SCHEDULE 2

Article 2(2)

Relevant Offences for the Purposes of Section 35 (fines: court to consider financial benefits)

The Wildlife and Countryside Act 1981

1. An offence under section 14K of the Wildlife and Countryside Act 1981(1) (offences in relation to species control orders).

The Sludge (Use in Agriculture) Regulations 1989

2. An offence under regulation 9 of the Sludge (Use in Agriculture) Regulations 1989(2) (offences in relation to the use of sludge on agricultural land).

The Control of Pollution (Amendment) Act 1989

3. An offence under any of the following provisions of the Control of Pollution (Amendment) Act 1989(3)—

- (a) section 1(1) (transporting controlled waste without registering)(4);
- (b) section 5(4)(b) (failure to comply with requirements imposed in exercise of enforcement powers)(5);
- (c) section 7(3) (failure to provide information)(6).

The Environmental Protection Act 1990

4. An offence under any of the following provisions of the Environmental Protection Act 1990(7)—

- (a) section 33(6) (unauthorised or harmful depositing, treatment or disposal etc. of waste; breaching conditions of a waste management licence)(8);
- (b) section 34(6) (failure to comply with duty of care requirements)(9);
- (c) section 35(7B) (waste management licences: false entry in records, and forgery of licences etc.)(10);
- (d) section 38(10) or (11) (failure to comply with measures required following suspension of licence);
- (e) section 44(1) or (2) (making false or misleading statements or false entries)(11);
- (f) section 59(5) (failure to comply with notice requiring removal of waste);
- (g) section 63(2) (offences in relation to depositing waste other than controlled waste);

(1) 1981 c.69; section 14K was inserted by section 16 of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6).

(2) S.I. 1989/1263, to which there are amendments not relevant to this Order.

(3) 1989 c.14.

(4) Section 1 was amended by paragraph 31(2) of Schedule 15 to the Environmental Protection Act 1990 (c.43) (“the 1990 Act”).

(5) Section 5 was amended by paragraph 31(2) of Schedule 15 to the 1990 Act.

(6) Section 7 was amended by paragraph 31 of Schedule 15 to the 1990 Act, paragraphs 3 of Schedule 19, 37 of Schedule 22, and 1 of Schedule 24, to the Environment Act 1995 (c.25) (“the 1995 Act”), and section 55(2) of the Anti-social Behaviour Act 2003 (c.38).

(7) 1990 c.43.

(8) Section 33 was relevantly amended by S.S.I. 2009/247 and S.S.I. 2011/226.

(9) Section 34 was relevantly amended by S.S.I. 2000/323, S.S.I. 2011/226, S.S.I. 2012/148, S.S.I. 2012/360 and S.S.I. 2005/22.

(10) Subsection (7B) was inserted by paragraph 66(2) of Schedule 22 to the 1995 Act.

(11) Section 44 was substituted by paragraph 4(1) of Schedule 19 to the 1995 Act.

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- (h) section 71(3) (failure to comply with information notice)(12);
- (i) section 78M(1) (failure to comply with a remediation notice)(13).

The Radioactive Substances Act 1993

5. An offence under any of the following provisions of the Radioactive Substances Act 1993(14)—

- (a) section 32(1) (offences relating to registration or authorisation)(15);
- (b) section 33(3) (failure to comply with requirements relating to site or disposal records);
- (c) section 34A(1) or (2) (offences of making false or misleading statements or false entries)(16).

The Environment Act 1995

6. An offence under either of the following provisions of the Environment Act 1995(17)—

- (a) section 27(3) (offences relating to information notices)(18);
- (b) section 110(2)(a) (failure to comply with a requirement imposed under enforcement powers)(19).

The Criminal Procedure (Scotland) Act 1995

7. An offence under section 293(2) of the Criminal Procedure (Scotland) Act 1995(20) (statutory offences: art and part and aiding and abetting) as it applies in relation to any other offence listed in this Schedule.

The Special Waste Regulations 1996

8. An offence under any of the following provisions of the Special Waste Regulations 1996(21)—

- (a) regulation 18(1) (failure to comply with any obligation or requirement under the Regulations);
- (b) regulation 18(3) (false or misleading statements);
- (c) regulation 18(4) (false entries in records).

(12) Section 71 was relevantly amended by paragraph 86(1) and (2) of Schedule 22, and paragraph 1 of Schedule 24, to the 1995 Act.

(13) Section 78M was inserted by section 57 of the Environment Act 1995 (c.25) and extended by regulation 2 of S.S.I. 2007/179 so that it has effect in relation to harm or, subject to an exception in regulation 2(2), pollution of the water environment, so far as attributable to radioactivity possessed by any substance.

(14) 1993 c.12.

(15) Section 32(1) was amended by paragraph 11 of Schedule 15 to the Energy Act 2004 (c.20) (“the 2004 Act”).

(16) Section 34A was inserted by paragraph 6 of Schedule 19 to the 1995 Act and was amended by paragraph 12 of Schedule 15 to the 2004 Act.

(17) 1995 c.25.

(18) Section 27 was amended by paragraph 43(2) of schedule 3 to the Regulatory Reform (Scotland) Act 2014 (asp 3) (“the 2014 Act”).

(19) Section 110 was amended by paragraph 29(6) of schedule 3 to the 2014 Act.

(20) 1995 c.46.

(21) S.I. 1996/972, to which there are amendments not relevant to this Order.

The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000

9. An offence under any of the following provisions of the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000~~(22)~~—

- (a) regulation 13(1) (holding contaminated equipment without registration);
- (b) regulation 13(2) (offences relating to the holding, disposing and decontaminating of equipment);
- (c) regulation 13(3) (failure to comply with labelling requirements);
- (d) regulation 13(4) (offences related to the supplying of information).

The Waste and Emissions Trading Act 2003

10. An offence under either of the following provisions of the Waste and Emissions Trading Act 2003~~(23)~~—

- (a) section 13(2) (failure to maintain records, gather information or make returns etc. as may be required by regulations made under section 13(1))~~(24)~~;
- (b) section 13(4)(b) (failure to comply with investigatory powers conferred by regulations made under section 13(3))~~(25)~~.

The Water Environment and Water Services (Scotland) Act 2003

11. An offence under section 18(9) of the Water Environment and Water Services (Scotland) Act 2003~~(26)~~ (failure to comply with information notice etc. or altering, suppressing or destroying documents).

The Landfill (Scotland) Regulations 2003

12. An offence under regulation 19(1) of the Landfill (Scotland) Regulations 2003~~(27)~~ (landfill operators breaching certain prohibitions, criteria and requirements).

The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003

13. An offence under regulation 11 of the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003~~(28)~~ (offences relating to the control and storage of silage and slurry).

The Producer Responsibility Obligations (Packaging Waste) Regulations 2007

14. An offence under any of the following provisions of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007~~(29)~~—

~~(22)~~ [S.S.I. 2000/95](#), to which there are amendments not relevant to this Order.

~~(23)~~ [2003 c.33](#).

~~(24)~~ The power to make regulations under section 13(1) of the Waste and Emissions Trading Act 2003 was exercised in [S.S.I. 2005/157](#).

~~(25)~~ The power to make regulations under section 13(3) of the Waste and Emissions Trading Act 2003 was exercised in [S.S.I. 2005/157](#).

~~(26)~~ [2003 asp 3](#). Section 18 is applied with modifications to as much of the Northumbria River Basin District as lies within Scotland by [S.I. 2003/3245](#), and to as much of the Solway Tweed River Basin District as lies within Scotland by [S.I. 2004/99](#).

~~(27)~~ [S.S.I. 2003/235](#), regulation 19 was amended by [S.S.I. 2003/343](#) and paragraph 8 of schedule 2 to the Anti-social Behaviour etc. (Scotland) Act 2004 ([asp 8](#)).

~~(28)~~ [S.S.I. 2003/531](#), regulation 11 was amended by [S.S.I. 2006/133](#).

~~(29)~~ [S.I. 2007/871](#), to which there are amendments not relevant to this Order.

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- (a) regulation 40(1) (breaching the producer registration obligation, the producer recovery and recycling obligations, or the certifying obligation);
- (b) regulation 40(3) (breaching operator recovery and recycling obligations);
- (c) regulation 40(4) (contravening requirements or conditions of accreditation);
- (d) regulation 40(5) (false or misleading information);
- (e) regulation 40(6) (failure to comply with notice requirements);
- (f) regulation 40(8) (holding companies).

The Environmental Liability (Scotland) Regulations 2009

15. An offence under any of the following provisions of the Environmental Liability (Scotland) Regulations 2009⁽³⁰⁾—

- (a) regulation 10(6) (failure by operator to take preventive measures, etc.);
- (b) regulation 11(7) (failure by operator to identify potential remedial measures, etc.);
- (c) regulation 12(5) (failure by operator to take remedial action, etc.);
- (d) regulation 18(4) (failure to provide required information).

The Waste Batteries and Accumulators Regulations 2009

16. An offence under any of the following provisions of the Waste Batteries and Accumulators Regulations 2009⁽³¹⁾—

- (a) regulation 89(1)(a)(i) to (xi) (producer failing to comply with requirements etc.);
- (b) regulation 89(1)(b) (false or misleading information) insofar as it relates to information furnished under regulation 11 (information provided to operators of battery compliance schemes), 27 (application by a small producer to register) or 29 (notification of changes to registration details);
- (c) regulation 89(1)(c) (false or misleading information);
- (d) regulation 89(1)(d) (false or misleading information) insofar as it relates to reports furnished under regulation 13 (reporting: portable batteries placed on the market by a small producer) or 16(5) or (6) (reporting portable batteries);
- (e) regulation 89(2) (failure to comply with requirements etc.);
- (f) regulation 89(4) (approved battery treatment operator or exporter failing to comply with requirements etc.);
- (g) regulation 89(6)(a) (disposing waste automotive and industrial batteries in landfill or by incineration);
- (h) regulation 89(6)(b) (failure to comply with requirements etc.);
- (i) regulation 89(6)(c) (disclosing information in contravention of regulation 82) insofar as the information disclosed under or by virtue of regulation 82(1) was disclosed by SEPA;
- (j) regulation 89(6)(d) (failure to comply with an enforcement notice) insofar as the enforcement notice was served by SEPA;
- (k) regulation 89(6)(e) (failure to comply with a requirement; powers of entry and inspection) insofar as the requirement was imposed by an enforcement officer authorised by SEPA⁽³²⁾;

⁽³⁰⁾ S.S.I. 2009/266, to which there are amendments not relevant to this Order.

⁽³¹⁾ S.I. 2009/890, to which there are amendments not relevant to this Order.

⁽³²⁾ Regulation 88(11) of S.I. 2009/890 provides for the meaning of “enforcement officer”.

- (l) regulation 89(6)(h) (failure to produce records or information) insofar as the requirement to produce a record or information was imposed by an enforcement officer authorised by SEPA;
- (m) regulation 89(6)(i) (false and misleading information to an enforcement officer) insofar as the information was provided to an enforcement officer authorised by SEPA or a person accompanying such an officer.

The Flood Risk Management (Scotland) Act 2009

17. An offence under section 47(1) of the Flood Risk Management (Scotland) Act 2009⁽³³⁾ (failure to provide information or documents required by notice; disposal, altering etc. of documents).

The Ozone-Depleting Substances (Qualifications) Regulations 2009

18. An offence under any of the following provisions of the Ozone-Depleting Substances (Qualifications) Regulations 2009⁽³⁴⁾—

- (a) regulation 9(c) (false or misleading information);
- (b) regulation 9(d) (failure to produce records);
- (c) regulation 5(7)(qualification and supervision);
- (d) regulation 6(4) (offences related to training).

The Waste Information (Scotland) Regulations 2010

19. An offence under regulation 6(1) of the Waste Information (Scotland) Regulations 2010⁽³⁵⁾ (offences related to waste information requests).

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

20. An offence under any of the following provisions of the Water Environment (Controlled Activities) (Scotland) Regulations 2011⁽³⁶⁾—

- (a) regulation 44(1)(a) (breaching prohibition on unauthorised controlled activity);
- (b) regulation 44(1)(b) (failure to comply with a general binding rule);
- (c) regulation 44(1)(c) (failure to comply with a registration);
- (d) regulation 44(1)(d) (failure to comply with a water use licence);
- (e) regulation 44(1)(f) (enforcement powers; failure to comply);
- (f) regulation 44(1)(j) (failure to comply with an enforcement notice);
- (g) regulation 44(1)(k) (failure to comply with an information notice);
- (h) regulation 44(1)(l) (false or misleading statements);
- (i) regulation 44(1)(m) (false entry in records);
- (j) regulation 44(1)(n) (forging or using etc. a document with intent to deceive);
- (k) regulation 44(1)(o) (causing or permitting any other person to commit an offence) as it applies in relation to an offence specified in sub-paragraphs (a) to (j) above.

⁽³³⁾ 2009 asp 6.

⁽³⁴⁾ S.I. 2009/216, to which there are amendments not relevant to this Order.

⁽³⁵⁾ S.S.I. 2010/435.

⁽³⁶⁾ S.S.I. 2011/209, to which there are amendments not relevant to this Order.

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The Waste Management Licensing (Scotland) Regulations 2011

21. An offence under any of the following provisions of the Waste Management Licensing (Scotland) Regulations 2011⁽³⁷⁾—

- (a) regulation 19(1) (carrying on an exempt activity without registration)⁽³⁸⁾;
- (b) regulation 28(6) (carrying on an exempt activity in breach of the registration obligations);
- (c) regulation 30(1) (unregistered broker or dealer etc.)⁽³⁹⁾;
- (d) paragraph 12(1) of Schedule 4 (unregistered collecting or transporting of waste);
- (e) paragraph 14(4), (6) or (7) of Schedule 4 (record keeping).

The Reservoirs (Scotland) Act 2011

22. An offence under any of the following provisions of the Reservoirs (Scotland) Act 2011⁽⁴⁰⁾—

- (a) section 5(2) (failure to comply: duty of multiple reservoir managers to co-operate);
- (b) section 17(1) or (2) (offences: registration);
- (c) section 42(1) (offences: construction or alteration);
- (d) section 52(1) or (2) (offences: inspection, supervision, record keeping);
- (e) section 58(1) (offences: record keeping, display of emergency response information);
- (f) section 66(1) (offence: failure to comply with a notice regarding appointment of engineer);
- (g) section 70(1) (failure to comply with enforcement notice);
- (h) section 99(2) (altering, suppressing or destroying documents);
- (i) section 103(4) (failure to provide notice of revocation of appointment or resignation of engineer).

The Pollution Prevention and Control (Scotland) Regulations 2012

23. An offence under any of the following provisions of the Pollution Prevention and Control (Scotland) Regulations 2012⁽⁴¹⁾—

- (a) regulation 67(1)(a) (contravention of permit requirements);
- (b) regulation 67(1)(b) (failure to comply with conditions of a permit);
- (c) regulation 67(1)(c) (failure to notify SEPA 14 days before change in operation);
- (d) regulation 67(1)(d) (failure to comply with an enforcement notice, suspension notice or closure notice);
- (e) regulation 67(1)(e) (failure to comply with information notice);
- (f) regulation 67(1)(f) (failure to notify SEPA immediately of breach of permit);
- (g) regulation 67(1)(g) (false or misleading information);
- (h) regulation 67(1)(h) (false entry in records);
- (i) regulation 67(1)(i) (forging or using etc. a document with intent to deceive);
- (j) regulation 67(1)(j) (failure to comply with a court order to remedy the offence);

⁽³⁷⁾ [S.S.I. 2011/228](#).

⁽³⁸⁾ Regulation 19 was amended by [S.S.I. 2012/148](#).

⁽³⁹⁾ Regulation 30 was amended by [S.S.I. 2012/360](#).

⁽⁴⁰⁾ [2011 asp 9](#).

⁽⁴¹⁾ [S.S.I. 2012/360](#), to which there are amendments not relevant to this Order.

- (k) regulation 67(1)(k) (failure to comply with duties on operators in Part 3 of Schedule 2).

The CRC Energy Efficiency Scheme Order 2013

24. An offence under any of the following provisions of the CRC Energy Efficiency Scheme Order 2013⁽⁴²⁾—

- (a) article 82(1) (false or misleading statements) insofar as the statement is made in purported compliance with article 45, or Parts 9 to 12 of that Order;
- (b) article 82(2) (failure to comply with enforcement notice) insofar as the enforcement notice was served by SEPA or the Scottish Ministers;
- (c) article 82(5) (refusing access to premises), but only where the administrator is SEPA⁽⁴³⁾.

The Waste Electrical and Electronic Equipment Regulations 2013

25. An offence under any of the following provisions of the Waste Electrical and Electronic Equipment Regulations 2013⁽⁴⁴⁾—

- (a) regulation 90(1) or (2) (failure to comply with producer obligations etc.);
- (b) regulation 90(3) (failure of an operator of a scheme to comply with requirements);
- (c) regulation 90(4) (failure of an operator to ensure that systems are set up to prioritise the reuse of whole appliances);
- (d) regulation 90(6) (failure of a distributor to comply with information and record keeping requirements);
- (e) regulation 90(7) (failure of an operator of an approved authorised treatment facility, or an approved exporter, to comply with requirements);
- (f) regulation 90(8)(a) (miscellaneous offences);
- (g) regulation 90(8)(b) (failure to comply with enforcement notice);
- (h) regulation 90(8)(c) (entry and inspections powers; failure to comply);
- (i) regulation 90(8)(f) (failure to produce information when required);
- (j) regulation 90(8)(g) (false or misleading information);
- (k) regulation 90(9) (failure to collect or transport waste electrical and electronic equipment in a way that optimises reuse and recycling).

The Regulatory Reform (Scotland) Act 2014

26. An offence under either of the following provisions of the Regulatory Reform (Scotland) Act 2014⁽⁴⁵⁾—

- (a) section 40(1) (causing significant environmental harm etc.);
- (b) section 41(7) (failure to comply with remediation order).

⁽⁴²⁾ S.I. 2013/1119, to which there are amendments not relevant to this Order.

⁽⁴³⁾ Regulation 9 of S.I. 2013/1119 provides for the meaning of “administrator”.

⁽⁴⁴⁾ S.I. 2013/3113, to which there are amendments not relevant to this Order.

⁽⁴⁵⁾ 2014 asp 3.