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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 19**

**The Water Environment (Remedial Measures) (Scotland) Regulations 2016**

**PART 5**

**Offences**

**Offences**

**11.—(1)** It is an offence for an appropriate person to—

- (a) fail to comply with the requirements of a remedial measures notice;
- (b) fail to comply with the requirements of a variation notice;
- (c) fail to comply with the requirements of an information notice.

**(2)** It is an offence for a person to—

- (a) obstruct an authorised person in the exercise of that person’s powers under regulation 31(4) of, and Schedule 6 to, the 2011 Regulations;
- (b) fail to comply with any requirement imposed in the exercise of an authorised person’s powers under regulation 31(4) of, and Schedule 6 to, the 2011 Regulations;
- (c) 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 authorised person’s powers or duties under or by virtue of regulation 31(4) of, and Schedule 6 to, the 2011 Regulations;
- (d) 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) of, and Schedule 6 to, the 2011 Regulations;
- (e) pretend to be a person authorised in accordance with regulation 31(4) of the 2011 Regulations;
- (f) 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 in purported compliance with a requirement to furnish any information imposed by or under any provision of these Regulations; or
- (g) cause or permit any other person to commit an offence under paragraph (1) or subparagraphs (a) to (f) of this paragraph.

**(3)** For the purposes of this regulation, “authorised person” means a person who is authorised under regulation 31(4) of the 2011 Regulations to exercise the powers specified in Part I of Schedule 6 to the 2011 Regulations in accordance with the requirements of Parts 2 and 3 of that Schedule for the purpose of discharging any of SEPA’s functions under these Regulations.

## **Defences**

**12.** It is a defence for an appropriate person charged with an offence under regulation 11(1)(a) or (b) to show that—

- (a) the acts or failures alleged to constitute the offence were a result of natural causes or force majeure which are exceptional or could not reasonably have been foreseen; or
- (b) the person does not own, manage, maintain or is not otherwise responsible for the artificial structure in relation to which the remedial measures notice or variation notice was served.

## **Penalties**

**13.** A person who commits an offence under regulation 11 is liable—

- (a) on summary conviction to—
  - (i) a fine not exceeding the statutory maximum;
  - (ii) imprisonment for a term not exceeding 12 months; or
  - (iii) both; or
- (b) on conviction on indictment to—
  - (i) a fine;
  - (ii) imprisonment for a term not exceeding 2 years; or
  - (iii) both.

## **Offences by bodies corporate**

**14.—(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, manager, secretary or other similar officer of the body; or
  - (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.

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

**15.—(1)** If—

- (a) a person is convicted of an offence under regulation 11(1)(a) or (b); and

- (b) it appears to the court that it is in the power of that person to undertake the remedial measures specified in the remedial measures notice or the variation notice, as the case may be, in relation to which the person is convicted of the offence,
- 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 that order for complying with the remedial measures notice or the variation notice, as the case may be.
- (2) Before making such an order, the court must have regard to any representations by SEPA as to the steps required for taking the measure.
- (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.