Regulatory Reform (Scotland) Act 2014

2014 asp 3

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The Bill for this Act of the Scottish Parliament was passed by the Parliament on 16th January 2014 and received Royal Assent on 19th February 2014

An Act of the Scottish Parliament to enable provision to be made for the purpose of promoting regulatory consistency; to make provision in relation to primary authorities; to enable provision to be made, and to make provision, as respects regulatory activities, and offences, relating to the environment; to make provision about regulatory functions relating to marine licensing, planning and street traders' licences; and for connected purposes.

Modifications etc. (not altering text)

C1 Act excluded (1.4.2015) by Landfill Tax (Scotland) Act 2014 (asp 2), **ss. 12(4)**, 43(2) (with s. 42); S.S.I. 2015/109, **art. 2** (with art. 3)

PART 1 S

REGULATORY FUNCTIONS

Regulations to encourage or improve regulatory consistency

1 Power as respects consistency in regulatory functions S

(1) The Scottish Ministers may by regulations make any provision which they consider will encourage or improve consistency in the exercise by regulators of regulatory functions.

(2) Regulations under subsection (1)—

(a) must specify the regulators to which they apply,

(b) may specify regulatory functions in respect of which they are, or are not, to apply,

(c) may prescribe the forms, procedure or other arrangements in respect of which a regulator is to impose, set, secure compliance with or enforce a regulatory

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requirement (including the manner in which and extent to which fees may be charged or costs recovered),

(d) may require a regulator to co-operate, or co-ordinate activity, with other regulators or the Scottish Ministers (including providing information to the Scottish Ministers).

(3) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) the regulators to which the regulations would apply,

(b) such persons or bodies as appear to the Scottish Ministers to represent the interests of persons substantially affected by the proposed regulations,

(c) such other persons or bodies as the Scottish Ministers consider appropriate.

(4) For the purposes of subsection (1), "consistency" includesconsistency—

(a) in the way in which particular regulators, their employees or their agents impose, set, secure compliance with or enforce a regulatory requirement,

(b) in the way in which different regulators, or the employees or agents of different regulators, impose, set, secure compliance with or enforce a regulatory requirement.

(5) In this Part—

"regulator" means a person, body or office-holder listed, or of a description listed, in schedule 1,

"regulatory functions" means—

(a) functions conferred by or under any enactment of—

(i) imposing requirements, restrictions or conditions in relation to an activity,

(ii) setting standards or outcomes in relation to an activity, or

(iii) giving guidance in relation to an activity, or

(b) functions which relate to the securing of compliance with, or enforcement of, requirements, restrictions, conditions, standards, outcomes or guidance which by or under any enactment relate to an activity,

but does not include any such functions exercisable by a planning authority,

"regulatory requirement" means a requirement, restriction, condition, standard or outcome (whether contained in guidance or otherwise)—

(a) which is to be complied with, met, attained or achieved by a person, body or office-holder whether by or under an enactment (including this Act) or otherwise, and

(b) in respect of which a regulator has regulatory functions.

(6) In the definition of "regulatory functions" in subsection (5), "activity" includes—

(a) providing goods and services, and

(b) employing or offering employment to any person.

Commencement Information

I1 S. 1 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

2 Regulations under section 1: further provision S

(1) Regulations under section 1 ("the regulations") may include provision requiring a regulator—
  (a) to secure compliance with or enforce an existing regulatory requirement,
  (b) to impose, set, secure compliance with or enforce any other regulatory requirement which the regulator proposes to, or may, impose or set.

(2) Subject to subsection (3), the regulations may also include provision—
  (a) amending a regulatory requirement,
  (b) for a regulatory requirement to cease to have effect (by means of repealing or revoking an enactment containing the requirement or otherwise),
  (c) creating a regulatory requirement,
  (d) requiring a regulator to create, amend or remove a regulatory requirement,
  (e) where a regulator is required to act as mentioned in paragraph (d), imposing conditions in relation to that requirement.

(3) The regulations may not include provision that would—
  (a) amend a regulatory requirement which, by or under an enactment (a "mandatory enactment")—
    (i) must be complied with, met, attained or achieved, and
    (ii) a regulator is required to impose or set,
  (b) repeal or revoke a mandatory enactment.

(4) But the regulations may include provision such as is mentioned in subsection (3) if the regulations otherwise make provision having an equivalent effect to the mandatory enactment.

(5) A provision in the regulations requiring a regulator to impose or set a regulatory requirement is not a mandatory enactment for the purposes of subsection (3) (unless such provision is included by virtue of subsection (4)).

(6) Where the regulations include provision such as is mentioned in subsection (2), they may also include provision preventing a regulator from imposing or setting a regulatory requirement—
  (a) that amends, replaces or revokes a regulatory requirement amended or created by the regulations,
  (b) that has an equivalent effect to a regulatory requirement which ceases to have effect by virtue of the regulations.

(7) Where the regulations make provision that would (but for this subsection) apply to a regulator, the Scottish Ministers may, if they consider it necessary or expedient, direct that, for a period no longer than that mentioned in subsection (8)—
  (a) the provision is not to apply to the regulator, or
  (b) the provision is to apply to the regulator—
    (i) with such modifications as may be specified in the direction,
    (ii) subject to such conditions as may be so specified.

(8) The period is that beginning with the day on which the direction is given and ending 6 months later.

(9) The Scottish Ministers must publish (in such manner as they consider appropriate) any direction given under subsection (7).

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(10) Where the regulations include provision such as is mentioned in subsection (1)(b), such provision does not affect any requirement for the regulator to consult before imposing or setting the regulatory requirement mentioned in that subsection.

(11) This section is without prejudice to the generality of the power to make regulations under section 1.

Commencement Information
I2 S. 2 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Compliance and enforcement

3 Regulations under section 1: compliance and enforcement S

(1) A regulator to which regulations under section 1 apply must comply with the regulations except to the extent that—
- (a) the regulator lacks the powers necessary to comply, or
- (b) the regulations impose on the regulator a requirement that conflicts with any other obligation imposed on the regulator by or under an enactment.

(2) Where a regulator fails to comply with the regulations, the Scottish Ministers may—
- (a) declare the regulator to have so failed, and
- (b) direct the regulator to take such steps to remedy the failure as are specified in the direction within such reasonable period as may be so specified.

(3) Where a regulator fails to take some or all of the steps specified in a direction under subsection (2)(b), the Scottish Ministers may—
- (a) take the steps,
- (b) arrange for any other person to take the steps, or
- (c) apply to the Court of Session for an order requiring the regulator to take the steps.

(4) The Scottish Ministers may recover from a regulator the costs incurred by the Scottish Ministers in relation to—
- (a) taking steps under paragraph (a) of subsection (3),
- (b) arranging for another person to take steps under paragraph (b) of that subsection (including costs incurred by that other person which the Scottish Ministers have to bear),
- (c) an application relating to the regulator under paragraph (c) of that subsection up to the time of making the application.

(5) The Scottish Ministers may recover the costs mentioned in subsection (4) as a civil debt.

Commencement Information
I3 S. 3 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Exercise of regulatory functions: economic duty and code of practice

4 Regulators' duty in respect of sustainable economic growth S

(1) In exercising its regulatory functions, each regulator must contribute to achieving sustainable economic growth, except to the extent that it would be inconsistent with the exercise of those functions to do so.

(2) The Scottish Ministers may give guidance to regulators with respect to the carrying out of the duty imposed by subsection (1).

(3) Regulators must have regard to guidance given under subsection (2).

(4) The Scottish Ministers must publish (in such manner as they consider appropriate) any such guidance.

(5) Subsection (1) does not apply to a regulator to the extent that the regulator is, by or under an enactment, already subject to a duty to the same effect as that mentioned in that subsection.

Commencement Information

I4 S. 4 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

5 Code of practice S

(1) The Scottish Ministers may issue and from time to time revise a code of practice in relation to the exercise of regulatory functions by a regulator.

(2) The Scottish Ministers must publish (in such manner as they consider appropriate) any code of practice issued under subsection (1).

(3) A code of practice issued under subsection (1) applies only to—
   (a) such regulators as may be specified in the code, and
   (b) such regulatory functions as may be so specified.

(4) A copy of a code of practice issued under subsection (1) must be issued to the regulators to whom it applies.

(5) A regulator to whom a code of practice issued under subsection (1) applies must, from the date a copy is issued to the regulator, have regard to the code—
   (a) in determining any general policy or principles by reference to which the regulator exercises any regulatory functions to which the code applies, and
   (b) in exercising any such regulatory functions.

(6) References in this section to a code of practice issued under subsection (1) include references to such a code as revised from time to time under that subsection.

Commencement Information

I5 S. 5 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

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6 Code of practice: procedure S

(1) Where the Scottish Ministers propose to issue or revise a code of practice under section 5, they must prepare a draft of the code (or revised code).

(2) In preparing the draft, the Scottish Ministers must seek to secure that it is consistent with the principles in subsection (3).

(3) The principles are—

(a) that regulatory functions should be—

(i) exercised in a way that is transparent, accountable, proportionate and consistent, and

(ii) targeted only at cases in which action is needed, and

(b) that regulatory functions should be exercised in a way that contributes to achieving sustainable economic growth, except to the extent that it would be inconsistent with the exercise of such functions to do so.

(4) The Scottish Ministers must consult the following about the draft—

(a) persons appearing to them to be representative of regulators in respect of which the code or revised code would apply,

(b) such other persons as they consider appropriate.

(5) If the Scottish Ministers decide to proceed with the draft (either in its original form or with modifications) they must lay the draft before the Scottish Parliament.

(6) Where the draft so laid is approved by resolution of the Parliament, the Scottish Ministers may issue the code (or revised code).

Commencement Information

I6 S. 6 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Power to modify list of regulators

7 Power to modify schedule 1 S

(1) The Scottish Ministers may by order modify schedule 1 so as to—

(a) add—

(i) a person, body or office-holder which has regulatory functions to the list of persons, bodies and office-holders for the time being listed there, or

(ii) a description of a person, body or office-holder having regulatory functions to that list,

(b) remove—

(i) a person, body or office-holder from that list, or

(ii) a description of a person, body or office-holder from that list,

(c) amend an entry on that list.

(2) An order under subsection (1) may, in relation to a person, body or office-holder or a description of a person, body or office-holder—

(a) specify that a function is or is not to be a regulatory function for the purposes of section 1, 4 or 5,

(b) specify the extent to which a function is or is not to be a regulatory function for such purposes.

Commencement Information

I7 S. 7 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

PART 2 S

PRIMARY AUTHORITIES

8 Scope of Part 2 S

(1) This Part applies where—

(a) a person carries on an activity in the area of two or more local authorities, and

(b) each of those authorities has the same relevant function in relation to that activity.

(2) In this Part (other than section 12), "the regulated person" means the person referred to in subsection (1)(a).

Commencement Information

I8 S. 8 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

9 Meaning of "relevant function" S

(1) In this Part, "relevant function", in relation to a local authority, means a regulatory function—

(a) exercised by that authority, and

(b) specified for the purposes of this Part by order made by the Scottish Ministers.

(2) In subsection (1), "regulatory function" has the same meaning as in section 1(5).

Commencement Information

I9 S. 9 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

10 Nomination of primary authorities S

(1) For the purposes of this Part, the Scottish Ministers may nominate a local authority to be the "primary authority" for the exercise of the relevant function in relation to the regulated person.

(2) The Scottish Ministers may delegate their function under subsection (1) to another person.

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(3) Sections 13 and 14 apply in any case where a primary authority is nominated under this section in relation to the regulated person.

Commencement Information
I10 S. 10 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

11 Nomination of primary authorities: conditions and registers S

(1) The Scottish Ministers may nominate a local authority under section 10(1) in relation to the regulated person only if—
  (a) the Scottish Ministers consider the authority suitable for nomination, and
  (b) the authority and the regulated person have agreed in writing to the nomination.

(2) The Scottish Ministers may in particular consider as suitable for nomination under subsection (1)—
  (a) the local authority in whose area the regulated person principally carries out the activity in relation to which the relevant function is exercised, or
  (b) the local authority in whose area the regulated person administers the carrying out of that activity.

(3) The Scottish Ministers may at any time revoke a nomination under section 10(1) if they consider that—
  (a) the authority is no longer suitable for nomination, or
  (b) it is appropriate to do so for any other reason.

(4) Subsection (2) applies in relation to a revocation of a nomination as it applies in relation to a nomination.

(5) The Scottish Ministers must maintain or cause to be maintained a register of nominations.

(6) Subsections (1) to (5) apply in relation to a person to whom the function under section 10(1) is delegated as they apply in relation to the Scottish Ministers.

Commencement Information
I11 S. 11 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

12 Primary authorities: power to make further provision S

(1) The Scottish Ministers may by order make further provision about the exercise of relevant functions by primary authorities in relation to persons (in this section, “regulated persons”).

(2) The provision that may be made under subsection (1) includes provision—
  (a) requiring a local authority other than the primary authority (an “enforcing authority”) to notify the primary authority before taking any enforcement action against a regulated person pursuant to the relevant function,
  (b) prescribing the circumstances in which—

(i) the enforcing authority may not take any enforcement action against a regulated person,

(ii) the primary authority may direct the enforcing authority not to take any enforcement action against a regulated person,

(iii) the enforcing authority must notify the primary authority that it has taken enforcement action against a regulated person,

(c) specifying time periods for the purposes of paragraph (b),

(d) prescribing the circumstances in which provision made by virtue of paragraphs (a) to (c) does not apply including, in particular, circumstances—

(i) where the enforcement action is required urgently to avoid a significant risk of serious harm to human health, the environment (including the health of animals or plants) or the financial interests of consumers,

(ii) where the application of provision made by virtue of those paragraphs would be wholly disproportionate,

(e) requiring an enforcing authority to notify the primary authority, as soon as reasonably practicable, of any enforcement action it takes against a regulated person in circumstances prescribed under paragraph (d).

(3) In subsection (2), "enforcement action" means any action—

(a) which relates to securing compliance with or enforcement of any requirement, restriction, condition, standard, outcome or guidance in the event of breach (or putative breach) of the requirement, restriction, condition, standard, outcome or (as the case may be) guidance,

(b) taken with a view to or in connection with—

(i) the imposition of any sanction (criminal or otherwise) in respect of an act or omission, or

(ii) the pursuit of any remedy conferred by an enactment in respect of an act or omission.

(4) Where a relevant function consists of or includes a function of inspection, an order under subsection (1) may make provision for or about an inspection plan including, in particular, provision for or in connection with—

(a) prescribing the circumstances in which a primary authority may make, revise or withdraw an inspection plan,

(b) specifying the matters that a primary authority must take into account in preparing an inspection plan,

(c) specifying the matters that must be included in an inspection plan,

(d) prescribing the circumstances in which a primary authority must consult a regulated person in relation to the carrying out of the function of inspection,

(e) prescribing the arrangements for notifying a local authority about the making, revising or withdrawal of an inspection plan,

(f) specifying the duties of a local authority in relation to an inspection plan,

(g) prescribing the circumstances in which a local authority must notify a primary authority before carrying out the function of inspection.

(5) An "inspection plan" is a plan made by a primary authority containing recommendations as to how a local authority with the function of inspection should exercise that function in relation to a regulated person.

(6) Before making an order under subsection (1), the Scottish Ministers must consult—

(a) any primary authority to which the order would apply,
(b) such persons or bodies as appear to the Scottish Ministers to represent the interests of persons substantially affected by the proposed order, and
(c) such other persons or bodies as the Scottish Ministers consider appropriate.

Commencement Information
I12 S. 12 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

13 Advice and guidance S

(1) The primary authority has the function of giving advice and guidance to—
(a) the regulated person in relation to the relevant function,
(b) other local authorities having the relevant function as to how they should exercise that function in relation to the regulated person.

(2) The primary authority may make arrangements with the regulated person as to how the authority will exercise its function under subsection (1).

Commencement Information
I13 S. 13 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

14 Power to charge S

The primary authority may charge the regulated person such fees as it considers represent the costs reasonably incurred by it in exercising functions as the primary authority under or by virtue of this Part in relation to the regulated person.

Commencement Information
I14 S. 14 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

15 Guidance S

(1) The Scottish Ministers may issue guidance to local authorities about the operation of this Part including, in particular, guidance about—
(a) inspection plans for or about which provision is made under an order under section 12(1),
(b) arrangements under section 13(2),
(c) the charging of fees under section 14.

(2) A local authority must have regard to any guidance issued to it under this section.

(3) Before issuing guidance under this section, the Scottish Ministers must consult such persons as they consider appropriate.

(4) The Scottish Ministers must publish (in such manner as they consider appropriate) any guidance issued under this section.

(5) The Scottish Ministers may at any time vary or revoke any guidance issued under this section.

Commencement Information
I15 S. 15 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

PART 3 S

ENVIRONMENTAL REGULATION

CHAPTER 1 S

REGULATIONS FOR PROTECTING AND IMPROVING THE ENVIRONMENT

16 General purpose: protecting and improving the environment S

(1) The purpose of this Chapter is to enable provision to be made for or in connection with protecting and improving the environment, including (without prejudice to that generality)—
  (a) regulating environmental activities,
  (b) implementing EU obligations, and international obligations, relating to protecting and improving the environment.

(2) In subsection (1), "international obligations" means any international obligations of the United Kingdom other than obligations to observe and implement EU obligations.

Commencement Information
I16 S. 16 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

17 Meaning of expressions used in section 16 and schedule 2 S

(1) Expressions used in section 16 have the following meanings for the purposes of this Chapter—
  "environmental activities" means—
    (a) activities that are capable of causing, or liable to cause, environmental harm, and
    (b) activities connected with such activities,
  "protecting and improving the environment" includes, in particular—
    (a) preventing deterioration (or further deterioration) of, and protecting and enhancing, the status of ecosystems, and
    (b) promoting the sustainable use of natural resources based on the long-term protection of available natural resources.

(2) In subsection (1)—

"activities" means activities of any nature whether industrial, commercial or otherwise and whether carried on in particular premises or otherwise; and includes (with or without other activities) the production, treatment, keeping, depositing or disposal of any substance,

"environmental harm" means—

(a) harm to the health of human beings or other living organisms,

(b) harm to the quality of the environment, including—

(i) harm to the quality of the environment taken as a whole,

(ii) harm to the quality of air, water or land, and

(iii) other impairment of, or interference with, ecosystems,

(c) offence to the senses of human beings,

(d) damage to property, or

(e) impairment of, or interference with, amenities or other legitimate uses of the environment.

(3) In schedule 2 (introduced by section 18), "regulated activities" means any environmental activities in respect of which regulations under that section make provision.

Commencement Information

I17 S. 17 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

18 Regulations relating to protecting and improving the environment S

(1) The Scottish Ministers may by regulations make provision for any of the purposes specified in Part 1 of schedule 2.

(2) Part 2 of that schedule has effect for supplementing Part 1 of the schedule.

(3) In accordance with section 16, the provision that may be made by regulations under this section is provision for or in connection with protecting and improving the environment, including any of the matters mentioned in paragraph (a) or (b) of subsection (1) of that section.

Commencement Information

I18 S. 18 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

19 Regulations relating to protecting and improving the environment: consultation S

(1) Before making any regulations under section 18, the Scottish Ministers must consult—

(a) any regulator on whom the proposed regulations would confer functions, and

(b) such other persons as they think fit, including such persons appearing to them to be representative of the interests of local government, industry, agriculture, fisheries or small businesses as they consider appropriate.

(2) Consultation undertaken before the coming into force of this section is as effective compliance with subsection (1) as if undertaken after its coming into force.

(3) In subsection (1), "regulator" is to be construed in accordance with paragraph 3(1) of schedule 2.

Commencement Information
I19 S. 19 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

CHAPTER 2 S

SEPA'S POWERS OF ENFORCEMENT

Fixed monetary penalties

20 Fixed monetary penalties S

(1) The Scottish Ministers may by order make provision for or about the imposition by SEPA of a fixed monetary penalty on a person in relation to a relevant offence.

(2) Provision under subsection (1) must provide that a fixed monetary penalty—
- (a) may be imposed on a person only where SEPA is satisfied on the balance of probabilities that the person has committed the offence to which the penalty relates,
- (b) is to be imposed by notice, and
- (c) may not be imposed on a person in relation to an offence constituted by an act or omission if a fixed monetary penalty has already been imposed on that person in respect of the same offence constituted by the same act or omission.

(3) For the purposes of this Chapter, a "fixed monetary penalty" is a requirement to pay to SEPA a penalty of an amount specified in an order made under subsection (1).

(4) The maximum amount of such penalty that may be so specified in relation to a particular offence is an amount equivalent to level 4 on the standard scale.

(5) In this section, "the standard scale" has the meaning given by section 225(1) of the Criminal Procedure (Scotland) Act 1995.

Commencement Information
I20 S. 20 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

21 Fixed monetary penalties: procedure S

(1) Provision under section 20—
- (a) must secure the results in subsection (2) ("the mandatory results"),
- (b) may secure the result in subsection (3) ("the optional result").

(2) The mandatory results are that—

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(a) where SEPA proposes to impose a fixed monetary penalty on a person, it must serve on the person a notice of what is proposed (a "notice of intent") which complies with subsection (4),

(b) except where the person has discharged liability by virtue of provision made under subsection (3), the person may make written representations to SEPA in relation to the proposed imposition of the fixed monetary penalty (including that the person would not, by reason of any defence, be liable to be convicted of the offence to which the penalty relates),

(c) SEPA must, after the end of the period for making representations, decide whether to impose the fixed monetary penalty,

(d) SEPA must, in so deciding, have regard to any representations,

(e) where SEPA decides to impose the fixed monetary penalty, the notice imposing it ("the final notice") complies with subsection (5), and

(f) the person on whom a fixed monetary penalty is imposed may appeal against the decision to impose it.

(3) The optional result is that the notice of intent also offers the person the opportunity to discharge the person's liability for the fixed monetary penalty by payment of a sum specified in the notice of intent (which sum must be less than or equal to the amount of the penalty).

(4) To comply with this subsection the notice of intent must include information as to—

(a) the grounds for the proposal to impose the fixed monetary penalty,

(b) the right to make written representations,

(c) the period within which representations may be made,

(d) where provision is made under subsection (3)—

(i) how payment to discharge the liability for the fixed monetary payment may be made,

(ii) the period within which liability for the fixed monetary penalty may be discharged, and

(iii) the effect of payment of the sum referred to in subsection (3).

(5) To comply with this subsection the final notice must include information as to—

(a) the grounds for imposing the penalty,

(b) how payment may be made,

(c) the period within which payment must be made,

(d) any early payment discounts or late payment penalties,

(e) rights of appeal, and

(f) the consequences of non-payment.

(6) Provision to secure the result in subsection (2)(f) must secure that the grounds on which a person may appeal against a decision of SEPA—

(a) include the grounds that—

(i) the decision was based on an error of fact,

(ii) the decision was wrong in law, and

(iii) the decision was unreasonable, but

(b) do not include the ground that SEPA failed to comply with guidance issued to it by the Lord Advocate under section 31(1).

Commencement Information
I21 S. 21 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

22 Fixed monetary penalties: effect on criminal proceedings etc. S

(1) Provision under section 20 must secure that in a case where a notice of intent referred to in section 21(2)(a) in respect of an offence constituted by an act or omission is served on a person—

(a) no criminal proceedings may be commenced against the person in respect of that offence constituted by that act or omission—

(i) before the end of any period in which the person may discharge liability for the fixed monetary penalty pursuant to section 21(3), or

(ii) if the person so discharges liability, and

(b) the period as mentioned in subsection (2) is not to be counted in calculating any period within which criminal proceedings in respect of that offence constituted by that act or omission must be commenced.

(2) The period is that beginning with the day on which the notice of intent is served and ending with the day which is the final day on which written representations may be made in relation to the notice.

(3) Provision under section 20 must also secure that, in a case where a fixed monetary penalty is imposed on a person in respect of an offence constituted by an act or omission, no criminal proceedings may be commenced against the person in respect of that offence constituted by that act or omission.

(4) The references in subsections (1)(a) and (3) to criminal proceedings being commenced are to be read as if they included references to—

(a) a warning being given by the procurator fiscal,

(b) a conditional offer (within the meaning of section 302 of the Criminal Procedure (Scotland) Act 1995) being sent,

(c) a compensation offer under section 302A of that Act being sent,

(d) a combined offer under section 302B of that Act being sent, and

(e) a work order under section 302ZA of that Act being made.

Commencement Information
I22 S. 22 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Variable monetary penalties

23 Variable monetary penalties S

(1) The Scottish Ministers may by order make provision for or about the imposition by SEPA of a variable monetary penalty on a person in relation to a relevant offence.

(2) Provision under subsection (1) must provide that a variable monetary penalty—

(a) may be imposed on a person only where SEPA is satisfied on the balance of probabilities that the person has committed the offence to which the penalty relates,

(b) is to be imposed by notice, and

(c) may not be imposed on a person in relation to an offence constituted by an act or omission if a variable monetary penalty has already been imposed on that person in respect of the same offence constituted by the same act or omission.

(3) For the purposes of this Chapter, a "variable monetary penalty" is, subject to subsection (4), a requirement to pay SEPA a penalty of such amount as SEPA may in each case determine.

(4) SEPA may not in any case impose a variable monetary penalty that exceeds the maximum amount specified in an order made under subsection (1) in relation to that case.

(5) The maximum amount that may be so specified is—

(a) in the case mentioned in subsection (6), the maximum amount of the fine that may be imposed on summary conviction in such a case,

(b) in any other case, £40,000.

(6) The case is one where the offence in respect of which the variable monetary penalty is imposed—

(a) is triable summarily (whether or not it is also triable on indictment), and

(b) is punishable on summary conviction by a fine (whether or not it is also punishable by a term of imprisonment).

(7) The Scottish Ministers may by order substitute another sum for the one for the time being mentioned in subsection (5)(b).

Commencement Information

I23 S. 23 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

24 Variable monetary penalties: procedure S

(1) Provision under section 23 must secure the results in subsection (2).

(2) The results are that—

(a) where SEPA proposes to impose a variable monetary penalty on a person, it must serve on the person a notice (a "notice of intent") which complies with subsection (3),

(b) the person may make written representations to SEPA in relation to the proposed imposition of the variable monetary penalty (including that the person would not, by reason of any defence, be liable to be convicted of the offence to which the penalty relates),

(c) SEPA must, after the end of the period for making such representations, decide whether to impose a variable monetary penalty and, if so, the amount of the penalty,

(d) SEPA must, in so deciding, have regard to any representations,

(e) where SEPA decides to impose a variable monetary penalty, the notice imposing it (the "final notice") complies with subsection (4), and

(f) the person on whom a variable monetary penalty is imposed may appeal against the decision as to the imposition or amount of the penalty.

(3) To comply with this subsection the notice of intent must include information as to—
(a) the grounds for the proposal to impose the variable monetary penalty,
(b) the right to make written representations, and
(c) the period within which representations may be made.

(4) To comply with this subsection the final notice must include information as to—
(a) the grounds for imposing the penalty,
(b) how payment may be made,
(c) the period within which the payment must be made,
(d) any early payment discounts or late payment penalties,
(e) rights of appeal, and
(f) the consequences of non-payment.

(5) Provision to secure the result in subsection (2)(c) must include provision for—
(a) the person on whom the notice of intent is served to be able to offer an undertaking as to action to be taken by that person, within such period as may be specified in the undertaking, for all or any of the following purposes—
(i) to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed,
(ii) to benefit the environment to the extent that the commission of the offence has harmed the environment,
(iii) to secure that no financial benefit arising from the commission of the offence accrues to the person,
(b) SEPA to be able to accept or reject such an undertaking, and
(c) SEPA to take any undertaking so accepted into account in its decision.

(6) Provision to secure the result in subsection (2)(f) must secure that the grounds on which a person may appeal against a decision of SEPA—
(a) include the grounds that—
(i) the decision was based on an error of fact,
(ii) the decision was wrong in law,
(iii) the amount of the penalty is unreasonable, and
(iv) the decision was unreasonable for any other reason, but
(b) do not include the ground that SEPA failed to comply with guidance issued to it by the Lord Advocate under section 31(1).

Commencement Information
I24 S. 24 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

25 Variable monetary penalties: effect on criminal proceedings etc. S

(1) Provision under section 23 must secure the result in subsection (2) in a case where—
(a) either—
(i) a variable monetary penalty is imposed on a person, or

(ii) an undertaking referred to in section 24(5) is accepted from a person, or

(b) both such a penalty is imposed on, and such an undertaking is accepted from, a person.

(2) The result is that no criminal proceedings may be commenced against the person for an offence constituted by an act or omission if the variable monetary penalty or, as the case may be, the undertaking related to that offence constituted by that act or omission.

(3) Provision under section 23 must provide that the period mentioned in subsection (4) is not to be counted in calculating any period within which criminal proceedings in respect of an act or omission in relation to which a notice of intent under section 24(2)(a) is served must be commenced.

(4) The period is that beginning with the day on which the notice of intent is served and ending with the day which is the final day on which written representations may be made in relation to the notice.

(5) The reference in subsection (2) to criminal proceedings being commenced is to be read as if it included a reference to—

(a) a warning being given by the procurator fiscal,

(b) a conditional offer (within the meaning of section 302 of the Criminal Procedure (Scotland) Act 1995) being sent,

(c) a compensation offer under section 302A of that Act being sent,

(d) a combined offer under section 302B of that Act being sent, and

(e) a work order under section 302ZA of that Act being made.

Commencement Information

I25 S. 25 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Non-compliance penalties

26 Undertakings under section 24: non-compliance penalties S

(1) Provision under section 23 may include provision for a person to pay a monetary penalty (in this Part, a "non-compliance penalty") to SEPA if the person fails to comply with an undertaking referred to in section 24(5) which is accepted from the person.

(2) Where such provision is included, it may also—

(a) specify the amount of the non-compliance penalty,

(b) provide for the amount to be calculated by reference to criteria specified by order by the Scottish Ministers,

(c) provide for the amount to be determined by SEPA (subject to any maximum amount set out in the provision),

(d) provide for the amount to be determined in any other way.

(3) Where provision is included as mentioned in subsection (1), it must provide that the maximum amount of the non-compliance penalty that may be imposed in any case is not to exceed the maximum amount of the variable monetary penalty to which the non-compliance penalty relates in such a case.

(4) Where provision is included as mentioned in subsection (1), it must secure that—
- (a) the non-compliance penalty is imposed by notice served by SEPA, and
- (b) the person on whom it is imposed may appeal against the notice.

(5) Provision pursuant to subsection (4)(b) must secure that the grounds on which a person may appeal against a notice referred to in that subsection include that—
- (a) the decision to serve the notice was based on an error of fact,
- (b) the decision was wrong in law,
- (c) the decision was unreasonable for any reason (including, in a case where the amount of the non-compliance penalty was determined by SEPA, that the amount is unreasonable).

Commencement Information
I26 S. 26 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Enforcement undertakings

27 Enforcement undertakings S

(1) The Scottish Ministers may by order make provision—
- (a) for or about enabling SEPA to accept an enforcement undertaking from a person in a case where SEPA has reasonable grounds to suspect that the person has committed a relevant offence, and
- (b) for the acceptance of the undertaking to have the consequences in subsection (4).

(2) For the purposes of this Chapter, an "enforcement undertaking" is an undertaking to take action of a type mentioned in subsection (3) and specified in the undertaking within such period as may be so specified.

(3) The types of action are—
- (a) action to secure that the offence does not continue or recur,
- (b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed,
- (c) action of a description specified by order by the Scottish Ministers.

(4) The consequences are that, unless SEPA has certified under provision made in pursuance of subsection (5)(g) that the person from whom the enforcement undertaking is accepted has not complied with the undertaking or any part of it—
- (a) no criminal proceedings may be commenced against the person from whom the enforcement undertaking is accepted in respect of an offence constituted by an act or omission if the undertaking relates to that offence constituted by that act or omission,
- (b) SEPA may not impose on the person a fixed monetary penalty which it would otherwise have power to impose by virtue of section 20 in respect of the act or omission, and
- (c) SEPA may not impose on the person a variable monetary penalty which it would otherwise have power to impose by virtue of section 23 in respect of the act or omission.

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

(5) An order under this section may in particular include provision—

(a) as to the procedure for entering into an enforcement undertaking,

(b) as to the terms of an enforcement undertaking,

(c) as to publication of an enforcement undertaking by SEPA,

(d) as to variation of an enforcement undertaking,

(e) as to circumstances in which a person may be regarded as having complied with an enforcement undertaking,

(f) as to monitoring by SEPA of compliance with an enforcement undertaking,

(g) as to certification by SEPA that an enforcement undertaking or any part of it has not been complied with,

(h) for appeals against such certification,

(i) in a case where a person has given inaccurate, misleading or incomplete information in relation to an enforcement undertaking, for that person to be regarded as not having complied with it,

(j) in a case where a person has complied partly but not fully with an enforcement undertaking, for that partial compliance to be taken into account in the imposition of any criminal or other sanction on the person,

(k) for the purpose of enabling criminal proceedings in respect of an act or omission in relation to which SEPA has accepted an enforcement undertaking to be commenced against a person who has not complied with the undertaking or any part of it, for the period mentioned in subsection (6) not to be counted in calculating any period within which such proceedings must be commenced.

(6) The period is that beginning with the day on which the enforcement undertaking is accepted and ending with—

(a) the day on which SEPA certifies, under provision made in pursuance of subsection (5)(g), that the undertaking or any part of it has not been complied with, or

(b) where an appeal against such a certification is taken, the day on which the appeal is finally determined.

(7) The reference in subsection (4)(a) to criminal proceedings being commenced is to be read as if it included a reference to—

(a) a warning being given by the procurator fiscal,

(b) a conditional offer (within the meaning of section 302 of the Criminal Procedure (Scotland) Act 1995) being sent,

(c) a compensation offer under section 302A of that Act being sent,

(d) a combined offer under section 302B of that Act being sent, and

(e) a work order under section 302ZA of that Act being made.

(8) References in this section to taking action specified in an enforcement undertaking include references to refraining from taking such action.

Commencement Information

I27 S. 27 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

Operation of penalties and cost recovery

28 Combination of sanctions S

(1) Provision may not be made by order under section 20 and section 23 conferring powers on SEPA in relation to the same offence unless it secures that—

(a) SEPA may not serve a notice of intent referred to in section 21(2)(a) on a person in relation to an act or omission where a variable monetary penalty has been imposed on that person in relation to the act or omission, and

(b) SEPA may not serve a notice of intent referred to in section 24(2)(a) on a person in relation to any act or omission where—

(i) a fixed monetary penalty has been imposed on the person in relation to the act or omission, or

(ii) the person has discharged liability for a fixed monetary penalty in relation to that act or omission pursuant to section 21(3).

(2) Provision under section 20 must secure that in a case where a notice of intent referred to in section 21(2)(a) is served on a person—

(a) SEPA may not, before the end of any period in which the person may discharge liability to the fixed monetary penalty pursuant to section 21(3), impose a variable monetary penalty on the person in respect of the act or omission to which the notice relates, and

(b) SEPA may not, if the person so discharges liability, impose a variable monetary penalty on the person in respect of that act or omission.

(3) Provision under section 20 must also secure that in a case where a fixed monetary penalty is imposed on a person, SEPA may not impose a variable monetary penalty on the person in respect of the act or omission giving rise to the penalty.

(4) Provision under section 20 must also secure the result that a fixed monetary penalty in respect of an offence constituted by an act or omission may not be imposed on a person if, in respect of that offence as constituted by that act or omission—

(a) criminal proceedings have been commenced against the person,

(b) the person has been given a warning by the procurator fiscal,

(c) the person has been sent a conditional offer (within the meaning of section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal)),

(d) the person has accepted, or is deemed to have accepted, a compensation offer issued under section 302A of that Act (compensation offer by procurator fiscal),

(e) the person has accepted, or is deemed to have accepted, a combined offer issued under section 302B of that Act, or

(f) a work order has been made against the person under section 303ZA of that Act (work orders).

(5) Provision under section 23 must also secure the result that a variable monetary penalty in respect of an offence constituted by an act or omission may not be imposed on a person if, in respect of that offence as constituted by that act or omission—

(a) criminal proceedings have been commenced against the person,

(b) the person has been given a warning by a procurator fiscal,

(c) the person has been sent a conditional offer (within the meaning of section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal)),

(d) the person has accepted, or is deemed to have accepted, a compensation offer issued under section 302A of that Act (compensation offer by procurator fiscal),

(e) the person has accepted, or is deemed to have accepted, a combined offer issued under section 302B of that Act, or

(f) a work order has been made against the person under section 303ZA of that Act (work orders).

Commencement Information

I28 S. 28 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

29 Monetary penalties S

(1) An order under this Chapter which confers power on SEPA to require a person to pay a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty may include provision for—

(a) early payment discounts,

(b) the payment of interest or other financial penalties for late payment of the penalty (such interest or other financial penalties not in total to exceed the amount of the penalty),

(c) enforcement of the penalty.

(2) Where such provision is included, it may also provide for—

(a) SEPA to recover the penalty, and any interest or other financial penalty for late payment, as a civil debt,

(b) the penalty, and any interest or other financial penalty for late payment, to be recoverable as if it were payable under an extract registered decree arbitral bearing a warrant for execution issued by a sheriff of any sheriffdom.

Commencement Information

I29 S. 29 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

30 Costs recovery S

(1) Provision under section 23 may include provision for SEPA to require a person on whom a variable monetary penalty is imposed to pay the costs incurred by SEPA in relation to the imposition of the penalty up to the time of its imposition.

(2) Where such provision is included, it must secure that—

(a) a requirement to pay the costs is imposed by notice,

(b) the notice specifies the amount required to be paid,

(c) SEPA may be required to provide a detailed breakdown of the amount,

(d) the person required to pay costs may appeal against—

(i) the decision of SEPA to impose the requirement,

(ii) the decision of SEPA as to the amount of the costs (including that some or all of the costs were unnecessarily incurred),

(e) SEPA is required to publish guidance about how it will exercise the power conferred by the provision.

(3) In subsection (1), the references to costs include in particular—

(a) investigation costs,

(b) administration costs,

(c) costs of obtaining expert advice (including legal advice).

(4) Subsections (1)(b) and (c) and (2) of section 29 apply to costs required to be paid by virtue of subsection (1) of this section as they apply to a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty.

Commencement Information

I30 S. 30 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Guidance

31 Guidance as to use of enforcement measures S

(1) The Lord Advocate may issue, and from time to time revise, guidance to SEPA on the exercise of its functions relating to enforcement measures.

(2) SEPA must comply with such guidance or revised guidance in exercising those functions.

(3) In this section, an "enforcement measure" means a fixed monetary penalty, variable monetary penalty or enforcement undertaking (and any references in this Chapter to the imposition of an enforcement measure include acceptance of an enforcement undertaking).

(4) Where power is conferred on SEPA by virtue of this Chapter to impose an enforcement measure in relation to an offence, the provision conferring the power must secure the results in subsection (5).

(5) The results are that—

(a) SEPA must publish guidance about—

(i) how the offence is enforced,

(ii) the sanctions (including criminal sanctions) to which a person who commits the offence may be liable,

(iii) the action which SEPA may take to enforce the offence, whether by virtue of this Chapter or otherwise,

(iv) the circumstances in which SEPA is likely to take any such action,

(v) SEPA's use of the enforcement measure,

(b) in the case of guidance relating to a fixed monetary penalty or variable monetary penalty, the guidance must contain the relevant information, and

(c) SEPA must have regard to the guidance in exercising its functions.

(6) In the case of guidance relating to a fixed monetary penalty, the relevant information referred to in subsection (5)(b) is information as to—
- (a) the circumstances in which the penalty is likely to be imposed,
- (b) the circumstances in which it may not be imposed,
- (c) the amount of the penalty,
- (d) how liability for the penalty may be discharged and the effect of discharge, and
- (e) rights to make representations and rights of appeal.

(7) In the case of guidance relating to a variable monetary penalty, the relevant information referred to in subsection (5)(b) is information as to—
- (a) the circumstances in which the penalty is likely to be imposed,
- (b) the circumstances in which it may not be imposed,
- (c) the matters likely to be taken into account by SEPA in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance), and
- (d) rights to make representations and rights of appeal.

(8) SEPA may from time to time revise guidance published by it by virtue of subsection (5).

(9) The references in subsections (5) to (7) to guidance include references to any revised guidance under subsection (8).

(10) Before publishing any guidance or revised guidance by virtue of this section, SEPA must consult—
- (a) the Lord Advocate, and
- (b) such other persons as it considers appropriate.

Commencement Information
I31 S. 31 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Publication of enforcement action

32 Publication of enforcement action S

(1) Subsection (2) applies where the Scottish Ministers make provision by order under—
- (a) section 20 as to the imposition by SEPA of a fixed monetary penalty,
- (b) section 23 as to the imposition by SEPA of a variable monetary penalty, or
- (c) section 27 as to the acceptance by SEPA of an enforcement undertaking.

(2) The order may require SEPA to publish such information as may be specified in the order as regards cases in which it has done what the order permits it to do.

Commencement Information
I32 S. 32 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Interpretation of Chapter 2

33 Interpretation of Chapter 2 S

In this Chapter—

"early payment discounts" means early payment discounts included in an order under this Chapter by virtue of section 29(1);

"enforcement undertaking" has the meaning given in section 27;

"fixed monetary penalty" has the meaning given in section 20;

"late payment penalties" means a requirement to pay interest or other financial penalties for late payment of a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty included in an order under this Chapter by virtue of section 29(1);

"non-compliance penalty" has the meaning given in section 26(1);

"variable monetary penalty" has the meaning given in section 23.

Commencement Information

I33 S. 33 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

CHAPTER 3 S

COURT POWERS

Compensation orders

34 Compensation orders against persons convicted of relevant offences S

(1) Where a person is convicted of a relevant offence, subsection (1) of section 249 of the Criminal Procedure (Scotland) Act 1995 (compensation order against convicted person) has effect in relation to the conviction subject to the modification in subsection (2).

(2) The modification is that the reference to payment of compensation in favour of the victim for any loss or damage caused directly or indirectly to the victim is to be read as if it included a reference to payment of compensation to a relevant person for costs incurred or to be incurred by the relevant person in preventing, reducing, remediating or mitigating the effects of—

(a) any harm to the environment resulting directly or indirectly from the offence,

(b) any other harm, loss, damage or adverse impacts so resulting from the offence.

(3) In subsection (2), the reference to costs does not include any costs which the relevant person has already recovered by virtue of—

(a) regulations under section 18 made in pursuance of paragraph 18(1) or 20 of schedule 2, or

(b) any other enactment.

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

(4) Where a compensation order (within the meaning of subsection (1) of section 249 of the 1995 Act) is made in respect of costs mentioned in subsection (2), that section has effect as if—

(a) the reference in subsection (8)(a) to the prescribed sum were, in relation to those costs, a reference to £50,000, and

(b) subsection (8A) were omitted.

(5) The Scottish Ministers may by order substitute a different sum of money for the one for the time being specified in subsection (4)(a).

(6) In this section—

"the 1995 Act" means the Criminal Procedure (Scotland) Act 1995,

"relevant person" means—

(a) SEPA,

(b) a local authority, or

(c) an owner or occupier of land—

(i) to which the harm, loss or damage mentioned in subsection (2) was caused, or

(ii) on which there was an adverse impact as mentioned in that subsection,

"owner", in relation to any land in Scotland, means a person (other than a creditor in a heritable security not in possession of the security subjects) for the time being entitled to receive or who would, if the land were let, be entitled to receive the rents of the land, and includes a trustee, factor, guardian or curator; and in the case of public or municipal land includes the persons to whom the management of the land is entrusted.

Commencement Information

I34 S. 34 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Fines

35 Fines for relevant offences: court to consider financial benefits S

(1) Subsection (2) applies where—

(a) a person is convicted by a court of a relevant offence, and

(b) the court proposes to impose a fine in respect of the offence.

(2) In determining the amount of the fine, the court must in particular have regard to any financial benefit which has accrued or is likely to accrue to the person in consequence of the offence.

Commencement Information

I35 S. 35 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

Publicity orders

36 Power to order conviction etc. for offence to be publicised S

(1) This section applies where a person is convicted by a court of a relevant offence.

(2) 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 in a specified manner—
- (a) the fact that the person has been convicted of the relevant offence,
- (b) specified particulars of the offence,
- (c) specified particulars of any other sentence passed by the court in respect of the offence.

(3) A publicity order is to be taken to be a sentence for the purposes of any appeal.

(4) The court may make a publicity order—
- (a) at its own instance, or
- (b) on the motion of the prosecutor.

(5) In deciding on the terms of a publicity order that it proposes to make, the court must have regard to any representations made by the prosecutor or by or on behalf of the person.

(6) A publicity order—
- (a) must specify a period within which the requirement to publicise the matters mentioned in paragraphs (a) to (c) of subsection (2) are to be complied with, and
- (b) may require the convicted person to supply SEPA, within a specified period, with evidence that that requirement has been complied with.

(7) In subsections (2) and (6), "specified", in relation to a publicity order, means specified in the order.

(8) A person who fails to comply with a publicity order commits an offence.

(9) A person who commits an offence under subsection (8) is liable—
- (a) on summary conviction, to a fine not exceeding £40,000,
- (b) on conviction on indictment, to a fine.

Commencement Information
I36 S. 36 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

37 Corporate offending S

(1) Subsection (2) applies where—
- (a) an offence under section 36(8) is committed by a relevant organisation, and
- (b) the commission of the offence involves the connivance or consent, or is attributable to the neglect, of a responsible official of the relevant organisation.

(2) The responsible official (as well as the relevant organisation) commits the offence.

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

(3) In this section—

"a relevant organisation" means—

(a) a company,

(b) a limited liability partnership,

(c) a partnership (other than a limited liability partnership), or

(d) another body or association,

"a responsible official" means—

(a) in the case of a company, a director, secretary, manager or similar officer of the company,

(b) in the case of a limited liability partnership, a member of the partnership,

(c) in the case of a partnership (other than a limited liability partnership), a partner of the partnership, or

(d) in the case of another body or association, a person who is concerned in the management or control of its affairs,

and in each case includes a person purporting to act in a capacity mentioned in any of paragraphs (a) to (d) of this definition.

Commencement Information

I37 S. 37 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

CHAPTER 4 S

MISCELLANEOUS

Vicarious liability

38 Vicarious liability for certain offences by employees and agents S

(1) Subsection (2) applies where a person ("A") commits a relevant offence while acting as the employee or agent of another person ("B").

(2) B also commits the relevant offence and is liable to be proceeded against and punished accordingly.

(3) Where B is charged with a relevant offence by virtue of subsection (2), it is a defence for B to show—

(a) that B did not know that the relevant offence was being committed by A,

(b) that no reasonable person could have suspected that the relevant offence was being committed by A, and

(c) that B took all reasonable precautions and exercised all due diligence to prevent the offence being committed.

(4) Proceedings may be taken against B in respect of the relevant offence whether or not proceedings are also taken against A in respect of that offence.

Commencement Information
I38 S. 38 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

39 Liability where activity carried out by arrangement with another S

(1) Subsection (2) applies where, in the course of carrying on a regulated activity—
- (a) a person ("A") commits a relevant offence,
- (b) at the time the offence is committed, A is carrying on the regulated activity for another person ("B"), and
- (c) B manages or controls the carrying on of the regulated activity.

(2) B also commits the relevant offence and is liable to be proceeded against and punished accordingly.

(3) Where B is charged with a relevant offence by virtue of subsection (2), it is a defence for B to show—
- (a) that B did not know that the relevant offence was being committed by A,
- (b) that no reasonable person could have suspected that the relevant offence was being committed by A, and
- (c) that B took all reasonable precautions and exercised all due diligence to prevent the offence being committed.

(4) Proceedings may be taken against B in respect of the relevant offence whether or not proceedings are also taken against A in respect of that offence.

(5) For the purposes of subsection (1)(b), A is carrying on a regulated activity for B whether A is carrying on the activity—
- (a) by arrangement between A and B, or
- (b) by arrangement with, or as employee or agent of, any other person ("C") with whom B has an arrangement under which C is to carry on the regulated activity.

(6) For the purposes of this section, "regulated activity"—
- (a) has the meaning given in section 17(3), and
- (b) includes activities specified in an order made by the Scottish Ministers for the purposes of this section.

(7) An order under subsection (6) may specify only activities that are environmental activities within the meaning of section 17.

Commencement Information
I39 S. 39 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Offence relating to significant environmental harm

40 Significant environmental harm: offence S

(1) It is an offence for a person to—

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

(a) act, or permit another person to act, in a way that causes or is likely to cause significant environmental harm, or

(b) fail to act, or permit another person not to act, in a way such that (in either case) the failure to act causes or is likely to cause significant environmental harm.40

(2) But no offence is committed under subsection (1) by a person who permits another person to act or not to act as mentioned in that subsection if the permission was given by or under an enactment conferring power on the person to authorise the act, or failure to act, that caused or (as the case may be) was likely to cause such harm (however such authorisation may be expressed).

(3) A person who acts, fails to act or permits another person to act or not to act as mentioned (in each case) in subsection (1) commits an offence under that subsection whether or not the person—

(a) intended the acts or failures to act to cause, or be likely to cause, significant environmental harm, or

(b) knew that, or was reckless or careless as to whether, the acts or failures to act would cause or be likely to cause such harm.

(4) For the purposes of subsection (1), a person acts in a way that is likely to cause significant environmental harm, or fails to act in a way such that the failure is likely to cause such harm if, at the time of so acting or failing to act, such harm may reasonably have been considered likely to occur even if it did not (for whatever reason) in fact occur.

(5) It is a defence for a person charged with an offence under subsection (1) to show that—

(a) the acts or failures alleged to constitute the offence were necessary in order to avoid, prevent or reduce an imminent risk of serious adverse effects on human health,

(b) the person took all such steps as were reasonably practicable in the circumstances to minimise any environmental harm, and

(c) particulars about the acts or failures were given to SEPA as soon as practicable after the acts or failures took place.

(6) It is a defence for a person charged with an offence under subsection (1) to show that the acts or failures alleged to constitute the offence were authorised by or otherwise carried out in accordance with—

(a) regulations made under section 18,

(b) an authorisation given under such regulations, or

(c) an enactment specified in an order made by the Scottish Ministers for the purposes of this section.

(7) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction to—

(i) a fine not exceeding £40,000,

(ii) imprisonment for a term not exceeding 12 months, or

(iii) both,

(b) on conviction on indictment to—

(i) a fine,

(ii) imprisonment for a term not exceeding 5 years, or

(iii) both.

(8) In this section, "environmental harm" has the same meaning as in section 17(2).

(9) For the purposes of this section, environmental harm is "significant" if—
- (a) it has or may have serious adverse effects, whether locally, nationally or on a wider scale, or
- (b) it is caused or may be caused to an area designated in an order by the Scottish Ministers for the purposes of this section.

(10) An order under subsection (9) may make different provision for—
- (a) different areas, or
- (b) different types of significant environmental harm in relation to different areas.

Commencement Information
I40 S. 40 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

41 Power of court to order offence to be remedied S

(1) This section applies where—
- (a) a court convicts a person of an offence under section 40(1),
- (b) it appears to the court that it is within the power of the person to remedy or mitigate the significant environmental harm to which the conviction relates.

(2) The court may, in addition to or instead of dealing with the person in any other way, order the person to take such steps as may be specified in the order to remedy or mitigate the harm.

(3) An order under subsection (2) (a "remediation order") is to be taken to be a sentence for the purposes of any appeal.

(4) A remediation order must specify a period ("the compliance period") within which the steps mentioned in that subsection are to be taken.

(5) On an application by the person convicted of the offence, the court may, on more than one occasion—
- (a) extend the compliance period within which those steps are to be taken,
- (b) vary the steps specified in a remediation order.

(6) An application under subsection (5) must be made before the end of the compliance period.

(7) A person who fails to comply with a remediation order commits an offence.

(8) A person who commits an offence under subsection (7) is liable—
- (a) on summary conviction to—
  - (i) a fine not exceeding £40,000,
  - (ii) imprisonment for a term not exceeding 12 months, or
  - (iii) both,
- (b) on conviction on indictment to—
  - (i) a fine,
  - (ii) imprisonment for a term not exceeding 5 years, or

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(iii) both.

Commencement Information
I41 S. 41 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

42 Corporate offending S

(1) Subsection (2) applies where—

(a) an offence under section 40(1) or 41(7) is committed by a relevant organisation, and

(b) the commission of the offence involves the connivance or consent, or is attributable to the neglect, of a responsible official of the relevant organisation.

(2) The responsible official (as well as the relevant organisation) commits the offence.

(3) In this section—

"a relevant organisation" means—

(a) a company,

(b) a limited liability partnership,

(c) a partnership (other than a limited liability partnership), or

(d) another body or association,

"a responsible official" means—

(a) in the case of a company, a director, secretary, manager or similar officer of the company,

(b) in the case of a limited liability partnership, a member of the partnership,

(c) in the case of a partnership (other than a limited liability partnership), a partner of the partnership, or

(d) in the case of another body or association, a person who is concerned in the management or control of its affairs,

and in each case includes a person purporting to act in a capacity mentioned in any of paragraphs (a) to (d) of this definition.

Commencement Information
I42 S. 42 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Offences relating to supply of carrier bags: fixed penalty notices

43 Offences relating to supply of carrier bags: fixed penalty notices S

(1) The Climate Change (Scotland) Act 2009 is amended as follows.

(2) After section 88 insert—

"Carrier bag offences: fixed penalty notices

88A Offences relating to supply of carrier bags: fixed penalty notices

(1) A person authorised for the purpose of this section by an enforcement authority may give a person a fixed penalty notice if the person so authorised has reason to believe that the person to whom the notice is given has committed a relevant offence.

(2) In subsection (1), "relevant offence" means an offence provided for in regulations made under section 88.

(3) The Scottish Ministers may by regulations make further provision about fixed penalty notices under subsection (1).

(4) Subject to section 89, the regulations may in particular include provision about—

(a) the enforcement authority in relation to the regulations; and

(b) the functions of that authority in relation to fixed penalty notices.

(5) Schedule 1A makes further provision about fixed penalties.".

(3) After schedule 1 insert—

"SCHEDULE 1A S

(introduced by section 88A(5))

FIXED PENALTIES

Preliminary

1 In this schedule, unless the context otherwise requires—

"enforcement authority" means the enforcement authority provided for in the regulations;

"notice" means a fixed penalty notice given under section 88A(1);

"the offence" means the offence to which the notice relates;

"prescribed" means prescribed by the regulations;

"the regulations" means regulations under section 88A(3).

Content of fixed penalty notice

2 (1) A notice must give reasonable particulars of the circumstances alleged to constitute the offence.

(2) A notice must also contain the following information—

(a) the amount of the fixed penalty;

(b) the payment deadline;

(c) the discounted amount and the discounted payment deadline;

(d) the name of—

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(i) the enforcement authority to which payment should be made; or

(ii) a person acting on behalf of the enforcement authority to whom payment should be made;

(e) the address at which payment should be made; and

(f) the method by which payment should be made.

(3) A notice given to a person must state that—

(a) any liability to conviction of the offence is discharged if the person makes payment of—

(i) the fixed penalty before the payment deadline; or

(ii) the discounted amount before the discounted payment deadline;

(b) the payment of a fixed penalty is not a conviction nor may it be recorded as such;

(c) no proceedings may be commenced against the person in respect of the offence unless the payment deadline has passed and the discounted amount or fixed penalty has not been paid;

(d) the person has the right to make representations as mentioned in paragraph 8.

Period in which notice can be given

3 A notice may not be given after such time relating to the offence as may be prescribed.

Amount of penalty

4 (1) The amount of the fixed penalty, and the discounted amount, are such amounts as may be prescribed.

(2) The maximum amount of the fixed penalty that may be prescribed is an amount equal to level 2 on the standard scale (within the meaning of section 225(1) of the Criminal Procedure (Scotland) Act 1995).

(3) The discounted amount prescribed must be less than the maximum amount of the fixed penalty.

Deadlines for payment

5 (1) The payment deadline is the first working day occurring at least 28 days after the day on which the notice is given.

(2) But the enforcement authority may extend the payment deadline in any particular case after the notice is given if it considers it appropriate to do so.

(3) The discounted payment deadline is the first working day occurring at least 14 days after the day on which notice is given.

(4) But the enforcement authority may extend the discounted payment deadline in any particular case after the notice is given if it considers it appropriate to do so.

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(5) On extending the payment deadline under sub-paragraph (2), or the discounted payment deadline under sub-paragraph (4), the enforcement authority must notify the recipient of the notice.

(6) In this paragraph, "working day" means any day other than a Saturday, a Sunday, Christmas Day or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland.

Method of payment

6 The fixed penalty (and the discounted payment amount) is payable—

(a) to the enforcement authority or the person acting on its behalf specified in the notice;

(b) at the address specified in the notice; and

(c) by the method specified in the notice.

Restriction on proceedings and effect of payment

7 (1) The earliest date that proceedings for the offence may be commenced is the day after the payment deadline.

(2) But no such proceedings may be commenced against a person if—

(a) the person makes payment of the discounted amount on or before the discounted payment deadline (or that deadline as extended under paragraph 5(4)); or

(b) the person makes payment of the fixed penalty on or before the payment deadline (or that deadline as extended under paragraph 5(2)).

(3) In proceedings for the offence, a certificate which—

(a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the enforcement authority; and

(b) states that payment of an amount specified in the certificate was, or was not, received by a date so specified,

is sufficient evidence of the facts stated.

(4) Where the enforcement authority is a local authority, the reference to a person having responsibility for the financial affairs of the enforcement authority in sub-paragraph (3)(a) is to be read as a reference to the person who has, as respects the local authority, the responsibility mentioned in section 95 of the Local Government (Scotland) Act 1973 (financial administration).

Withdrawal of fixed penalty notice

8 (1) A recipient of a notice may make representations to the enforcement authority as to why the notice ought not to have been given.

(2) If, having considered any representations under sub-paragraph (1), the enforcement authority considers that the notice ought not to have been given, it may give to the person a notice withdrawing the notice.

(3) Where a notice under sub-paragraph (2) is given—

(a) the enforcement authority must repay any amount which has been paid in pursuance of the fixed penalty notice; and

(b) no proceedings may be commenced against the person for the offence.

Effect of prosecution on fixed penalty notice

9 Where proceedings for an offence in respect of which a notice has been given are commenced, the notice is to be treated as withdrawn.

General and supplemental

10 The regulations may make provision about—

(a) the application by enforcement authorities of payments received under this schedule;

(b) the keeping of accounts, and the preparation and publication of statements of account, in relation to such payments.

11 (1) The regulations may prescribe—

(a) the form of notices including notices under paragraph 8(2);

(b) the circumstances in which notices may not be given; and

(c) the method by which fixed penalties may be paid.

(2) The regulations may modify sub-paragraphs (1) and (3) of paragraph 5 so as to substitute a different deadline for the deadline for the time being specified there.

12 The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.”.

Commencement Information

I43 S. 43 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Publicity and remediation orders: appeals by prosecutor

44 Orders under sections 36 and 41: prosecutor's right of appeal S

(1) The Criminal Procedure (Scotland) Act 1995 is amended in accordance with this section.

(2) In section 108 (Lord Advocate's rights of appeal against disposal)—

(a) in subsection (1), after paragraph (ca) insert—

“(cb) a decision under section 36(2) of the Regulatory Reform (Scotland) Act 2014 not to make a publicity order;

(cc) a decision under section 41(2) of that Act not to make a remediation order;”,

(b) in subsection (2)(b)(ii), for the words “or (ca)” substitute “ , (ca), (cb) or (cc) ”.

(3) In section 175 (right of appeal from summary proceedings)—

(a) in subsection (4), after paragraph (ca) insert—

“(cb) a decision under section 36(2) of the Regulatory Reform (Scotland) Act 2014 not to make a publicity order;

(cc) a decision under section 41(2) of that Act not to make a remediation order;",

(b) in subsection (4A)(b)(ii), for "or (ca)" substitute " , (ca), (cb) or (cc) ".

Commencement Information

I44 S. 44 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Contaminated land and special sites

45 Contaminated land and special sites S

(1) The Environmental Protection Act 1990 is amended as follows.

(2) In section 78F (determination of appropriate person to bear responsibility for remediation), after subsection (5) insert—

"(5A) But where the contaminated land is owned or occupied by the Crown by virtue of its having vested as *bona vacantia* in the Crown, or its having fallen to the Crown as *ultimus haeres*, the Crown is not an appropriate person under subsection (4) or (5) for the purposes of this Part.".

(3) After section 78Q insert—

"**78QA Land no longer considered to be contaminated**

(1) Subsection (2) applies where—

(a) a local authority has given notice under section 78B above that land in its area has been identified as contaminated land;

(b) the land is not designated as a special site by virtue of section 78C(7) or 78D(6) above; and

(c) the local authority is satisfied that the land is no longer contaminated land.

(2) The local authority may give notice (a "non-contamination notice") that the land is no longer contaminated land to—

(a) the appropriate Agency;

(b) the owner of the land;

(c) any person who appears to the local authority to be in occupation of the land;

(d) each person who appears to the authority to be an appropriate person.

(3) Where a non-contamination notice is given in respect of land—

(a) the notice mentioned in subsection (1) above ceases to have effect (and accordingly the land is no longer identified as contaminated land for the purposes of this Part);

(b) no remediation notice may be served in respect of the land;

(c) any remediation notice in force in respect of the land at the time the non-contamination notice is given ceases to have effect (except to the extent that the non-contamination notice provides otherwise); and

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(d) no proceedings may be begun against a person for an offence under section 78M(1) above in respect of such a remediation notice except in relation to a provision of the notice which continues to have effect by virtue of paragraph (c) above.

(4) A non-contamination notice shall not prevent the land, or any of the land, to which the notice relates being identified as contaminated land on a subsequent occasion.

(5) Where land, or any of the land, to which a non-contamination notice relates is subsequently identified as contaminated land, or is subsequently designated as a special site by virtue of section 78C(7) or 78D(6), subsection (3)(b) above does not prevent a remediation notice being served in respect of the land.

(6) Where a local authority gives a non-contamination notice, it must keep (in such form as it thinks fit) a record of—

(a) details of the land to which the notice relates;

(b) its reasons for giving the notice; and

(c) the date of—

(i) the notice mentioned in subsection (1) above;

(ii) service of the non-contamination notice.

(7) Subsection (8) of section 78R below applies to records kept under subsection (6) above as it applies to registers maintained by enforcing authorities under that section; and for that purpose, the reference to entries is to be read as if it were a reference to information in such records.

(8) In performing its function under subsection (2) above, a local authority must have regard to any guidance issued by the Scottish Ministers in accordance with section 78YA below.

(9) In this section, references to land in respect of which a non-contamination notice is given include references to part of that land.”.

(4) After section 78T insert—

“**78TA Registers: removal of information about land designated as special site**

(1) Subsection (2) applies where a local authority has entered in a register maintained under section 78R above particulars of or relating to notices mentioned in paragraph (e) or (f) of subsection (1) of that section.

(2) The local authority may remove the particulars from the register.

(3) Particulars may be removed under subsection (2) above only if—

(a) the Scottish Environment Protection Agency has given the local authority a notice under section 78Q(4) above that the land to which the notices relate is no longer land which is required to be designated as a special site; and

(b) the date specified in the notice given under that section has passed.

(4) Where a local authority removes particulars from a register under subsection (2) above, it must keep (in such form as it thinks fit) a record of—

(a) the particulars that have been removed;
(b) its reasons for removing them; and
(c) the date on which the particulars—
(i) were originally entered in the register; and
(ii) were removed.

(5) Subsection (8) of section 78R above applies to records kept under subsection (4) above as it applies to registers maintained by enforcing authorities under that section; and for that purpose, the reference to entries is to be read as if it were a reference to information in such records.

(6) In performing its functions under subsection (4) above, a local authority must have regard to any guidance issued by the Scottish Ministers in accordance with section 78YA below.

(7) Where a local authority removes particulars from a register under subsection (2) above, it must give notice of such removal to—
(a) the Scottish Environment Protection Agency;
(b) any person who is the owner of land designated as a special site by a notice to which the particulars relate;
(c) any person who appears to the local authority to be in occupation of the whole or any part of that land;
(d) each person—
(i) who appears to the Scottish Environment Protection Agency to be an appropriate person in relation to that land; and
(ii) in respect of whom details have been given by the Scottish Environment Protection Agency to the local authority sufficient to enable notice of such removal to be given; and
(e) each person who appears to the local authority to be an appropriate person in relation to that land.

78TB Effect of removal of information from register

(1) Where a local authority removes particulars from a register under section 78TA(2) above—
(a) any remediation notice relating to the land ceases to have effect; and
(b) no proceedings may be begun against a person for an offence under section 78M(1) above in respect of any remediation notice relating to the land.

(2) In subsection (1), "the land" means land designated as a special site by a notice to which the particulars mentioned in that subsection relate.".

(5) In section 78X (supplementary provisions), in subsection (4), after paragraph (f) insert—
"(g) in relation to property and rights that have vested as *bona vacantia* in the Crown, or that have fallen to the Crown as *ultimus haeres*, the Queen's and Lord Treasurer's Remembrancer.".

(6) In section 78YA (supplementary provisions with respect to guidance by the Scottish Ministers), in subsection (4A), after "draft" where it second occurs insert " , and a draft of any guidance referred to in section 78QA(8) or section 78TA(6) above, ".

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Commencement Information

I45 S. 45 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Amendment of powers under section 108 of Environment Act 1995

46 Amendment of powers under section 108 of Environment Act 1995 S

(1) The Environment Act 1995 is amended as follows.

(2) In section 108 (powers of enforcing authorities and persons authorised by them)—

(a) in subsection (1)—

(i) the word "or" immediately following paragraph (b) is repealed,

(ii) after paragraph (c) insert—

"(d) of determining whether any of the following offences are being or have been committed—

(i) an offence under section 110 of this Act;

(ii) an offence under section 40(1) of the Regulatory Reform (Scotland) Act 2014 (offences relating to significant environmental harm);

(iii) an offence under section 293(2) of the Criminal Procedure (Scotland) Act 1995 (statutory offences: art and part and aiding or abetting) as it applies in relation to an offence mentioned in sub-paragraph (i) or (ii) above;

(iv) an attempt, conspiracy or incitement to commit an offence mentioned in sub-paragraph (i) or (ii) above; or

(e) in a case only where the person is authorised by SEPA, of determining whether, and if so to what extent, any financial benefit has accrued or is likely to accrue to a person in connection with an offence mentioned in subsection (1A) below which the authorised person reasonably believes is being or has been committed.",

(b) after subsection (1) insert—

"(1A) The offence is a relevant offence (within the meaning of section 53 of the Regulatory Reform (Scotland) Act 2014) for the purpose of provision made under section 24, or of section 35, of that Act).",

(c) in subsection (4)—

(i) in paragraph (h), after sub-paragraph (iii) insert—

"(iv) to ensure that it is available for use as evidence in any proceedings for an offence under section 40(1) of the Regulatory Reform (Scotland) Act 2014;",

(ii) in paragraph (j), the words from "to answer" to the end become sub-paragraph (i) of that paragraph, and after that sub-paragraph insert "; and

(ii) without prejudice to the generality of paragraph (c) above, to attend at such place and at such reasonable time as the authorised person may specify to answer those questions and sign such a declaration;",

(iii) after paragraph (j) insert—

"(ja) in a case only where he is authorised under subsection (1) or (2) above by SEPA, and without prejudice to the generality of paragraphs (c) and (j) above, to require any person whom he has reasonable cause to believe to be able to give any information relevant to an examination or investigation under paragraph (c) above, to provide the person's name, address and date of birth;",

(iv) after paragraph (k) insert—

"(ka) as regards any premises which by virtue of an authorisation from SEPA he has power to enter, to search the premises and seize and remove any documents found in or on the premises which he has reasonable cause to believe—

(i) may be required as evidence for the purpose of proceedings relating to an offence under any of the pollution control enactments, or under section 40(1) of the Regulatory Reform (Scotland) Act 2014, which he reasonably believes is being or has been committed; or

(ii) may assist in determining whether, and if so to what extent, any financial benefit has accrued or is likely to accrue as mentioned in subsection (1)(e) above;",

(d) in subsection (5), after "with" insert " , or whether an offence under section 40(1) of the Regulatory Reform (Scotland) Act 2014 is being, or has been, committed, ",

(e) in subsection (6), paragraph (a) and the word "and" immediately following it are repealed,

(f) after subsection (7) insert—

"(7A) An authorised person may not exercise the power in subsection (4)(ka) above to seize and remove documents except under the authority of a warrant by virtue of Schedule 18 to this Act.

(7B) Section 108A applies where documents are removed under that power.

(7C) Subsections (7D) and (7E) apply where a document removed under that power contains information in respect of which a claim to

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confidentiality of communications could be maintained in legal proceedings.

(7D) The information may not be used—

(a) in evidence for the purpose of proceedings mentioned in paragraph (ka)(i) of subsection (4) above against a person who would be entitled to make such a claim in relation to the document; or

(b) to determine whether any financial benefit has accrued or is likely to accrue as mentioned in subsection (1)(e) above.

(7E) The document must be returned to the premises from which it was removed, or to the person who had possession or control of it immediately before it was removed, as soon as reasonably practicable after the information is identified as information described in subsection (7C) above (but the authorised person may retain, or take copies of, any other information contained in the document).",

(g) in subsection (12), at the end add ", except in a case where the proceedings relate to—

(a) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations), or

(b) another offence where in giving evidence the person makes a statement inconsistent with the answer.",

(h) in subsection (15)—

(i) after the definition of "authorised person" insert—

""document" includes any thing in which information of any description is recorded (by any means) and any part of such a thing;",

(ii) in the definition of "pollution control functions", paragraph (a) is repealed.

(3) After section 108, insert—

"**108A Procedure where documents removed**

(1) An authorised person (within the meaning of subsection (15) of section 108 of this Act) who removes any documents under the power in subsection (4)(ka) of that section shall, if requested to do so by a person mentioned in subsection (2) below, provide that person with a record of what the authorised person removed.

(2) The persons are—

(a) a person who was the occupier of any premises from which the documents were removed at the time of their removal;

(b) a person who had possession or control of the documents immediately before they were removed.

(3) The authorised person shall provide the record within a reasonable time of the request for it.

(4) A person who had possession or control of documents immediately before they were removed may apply to SEPA—

(a) for access to the documents; or

(b) for a copy of them.

(5) SEPA shall—

(a) allow the applicant supervised access to the documents for the purpose of copying them or information contained in them; or

(b) copy the documents or information contained in them (or cause the documents or information to be copied) and provide the applicant with such copies within a reasonable time of the application.

(6) But SEPA need not comply with subsection (5) above where it has reasonable grounds for believing that to do so might prejudice—

(a) any investigation for a purpose mentioned in paragraph (a), (d) or (e) of subsection (1) of section 108 of this Act; or

(b) any criminal proceedings which may be brought as a result of any such investigation.

(7) In subsection (5) above, "supervised access" means access under the supervision of a person approved by SEPA.

(8) A person who claims that an authorised person or SEPA has failed to comply with the requirements of subsection (1), (3) or (5) above may apply to the sheriff for an order under subsection (10) below.

(9) An application under subsection (8) above—

(a) relating to a failure to comply with the requirements of subsection (1) or (3) above may be made only by a person who is entitled to make a request under subsection (1) above;

(b) relating to a failure to comply with subsection (5) above may be made only by a person who had possession or control of the documents immediately before they were removed.

(10) The sheriff may, if satisfied that the authorised person or SEPA has failed to comply with the requirements of subsection (1), (3) or (5) above, order the person, or as the case may SEPA, to comply with the requirements within such time and in such manner as may be specified in the order.".

(4) In Schedule 18 (supplemental provisions with respect to powers of entry)—

(a) in paragraph 2—

(i) after sub-paragraph (1) insert—

"(1A) If it is shown to the satisfaction of the sheriff or a justice of the peace, on sworn information in writing, that there are reasonable grounds for the exercise in relation to any documents of a power in section 108(4)(ka) of this Act, the sheriff or justice of the peace may by warrant authorise SEPA to designate a person who shall be authorised to exercise the power in relation to the documents in accordance with the warrant and, if need be, by force.",

(ii) for sub-paragraph (3) substitute—

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

"(3) A warrant under this Schedule in respect of the power in section 108(6) of this Act to enter any premises used for residential purposes shall not be issued unless the sheriff or justice of the peace is satisfied that such entry is necessary for any purpose for which the power is proposed to be exercised.",

(iii) after sub-paragraph (4) add—

"(5) A sheriff may grant a warrant under this Schedule in relation to premises situated in an area of Scotland even though the area is outside the territorial jurisdiction of that sheriff; and any such warrant may, without being backed or endorsed by another sheriff, be executed throughout Scotland in the same way as it may be executed within the sheriffdom of the sheriff who granted it.",

(b) in paragraph 3—

(i) after "shall" insert " , if so required, ",

(ii) the words "designation and other" are repealed.

Commencement Information

I46 S. 46 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Authorisations relating to waste management: offences by partnerships

47 Carriers of controlled waste: offences by partnerships affecting registration S

In section 3(5) of the Control of Pollution (Amendment) Act 1989 (restrictions on powers under section 2)—

(a) after paragraph (a), insert—

"(aa) a partnership has been convicted of a prescribed offence committed at a time when the applicant or registered carrier was a member of that partnership;",

(b) the word "or" immediately following paragraph (b) is repealed,

(c) after paragraph (b), insert—

"(ba) where the applicant or registered carrier is a partnership, a person who is a member of that partnership—

(i) has been convicted of a prescribed offence;

(ii) was a member of another partnership at a time when a prescribed offence of which that other partnership has been convicted was committed; or

(iii) was a director, manager, secretary, or other similar officer of a body corporate at a time when a prescribed offence of which that body corporate has been convicted was committed; or",

(d) in paragraph (c)—

(i) the word "or" immediately following sub-paragraph (i) is repealed,

(ii) after sub-paragraph (i), insert—

"(ia) was a member of a partnership at a time when a prescribed offence of which that partnership has been convicted was committed; or",

(iii) in sub-paragraph (ii), for the word "for" substitute " of ".

Commencement Information

I47 S. 47 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

48 Waste management licences: offences by partnerships S

In section 74(7) of the Environmental Protection Act 1990 (meaning of "fit and proper person")—

(a) after paragraph (a), insert—

"(aa) a partnership has been convicted of a relevant offence committed when the holder or, as the case may be, proposed holder of the licence was a member of that partnership;",

(b) the word "or" immediately following paragraph (b) is repealed,

(c) after paragraph (b), insert—

"(ba) where the holder or, as the case may be, proposed holder of the licence is a partnership, a person who is a member of that partnership—

(i) has been convicted of a relevant offence;

(ii) was a member of another partnership at a time when a relevant offence of which that other partnership has been convicted was committed; or

(iii) was a director, manager, secretary, or other similar officer of a body corporate at a time when a relevant offence of which that body corporate has been convicted was committed; or",

(d) in paragraph (c)—

(i) the word "or" immediately following sub-paragraph (i) is repealed,

(ii) after sub-paragraph (i), insert—

"(ia) was a member of a partnership at a time when a relevant offence of which that partnership has been convicted was committed; or",

(iii) in sub-paragraph (ii), for the word "for" substitute " of ".

Commencement Information

I48 S. 48 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Air quality assessments

49 Duty of local authorities in relation to air quality assessments etc. S

In section 84 of the Environment Act 1995 (duties of local authorities in relation to designated areas)—

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

(a) subsection (1) is repealed,

(b) in subsection (2), for the words from the beginning to "to" where it fourth occurs, substitute " Where an order under section 83 above comes into operation, the local authority which made the order shall ".

Commencement Information

I49 S. 49 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Smoke control areas: fuels and fireplaces

50 Smoke control areas: authorised fuels and exempt fireplaces S

(1) The Clean Air Act 1993 is amended as follows.

(2) In section 20 (offence of emitting smoke in smoke control area where emission caused by use of fuel other than authorised fuel)—

(a) after subsection (5) insert—

"(5A) In this Part, "authorised fuel" means a fuel included in a list of authorised fuels kept by the Scottish Ministers for the purposes of this Part.

(5B) The Scottish Ministers must—

(a) publish the list of authorised fuels; and

(b) publish a revised copy of the list as soon as is reasonably practicable after any change is made to it.

(5C) The list must be published in such manner as the Scottish Ministers consider appropriate.",

(b) in subsection (6), for "In" substitute " Except as provided in subsection (5A), in ".

(3) In section 21 (power by order to exempt certain fireplaces)—

(a) the existing text becomes subsection (5); and for the word "The" at the beginning of that subsection substitute " Except where subsection (1) applies, the ".

(b) before that subsection insert—

"(1) For the purposes of this Part, the Scottish Ministers may exempt any class or description of fireplace from the provisions of section 20 (prohibition of smoke emissions in smoke control areas) if they are satisfied that such fireplaces can be used for burning fuel other than authorised fuels without producing any smoke or a substantial quantity of smoke.

(2) An exemption under subsection (1) may be made subject to such conditions as the Scottish Ministers consider appropriate.

(3) The Scottish Ministers must—

(a) publish a list of those classes or descriptions of fireplace that are exempt under subsection (1), including details of any conditions to which an exemption is subject; and

(b) publish a revised copy of the list as soon as is reasonably practicable after any change is made to the classes or descriptions of fireplace that are so exempt or to the conditions to which an exemption is subject.

(4) The list must be published in such manner as the Scottish Ministers consider appropriate.".

(4) In the title of section 21, the words "by order" are repealed.

(5) In section 29 (interpretation of Part 3), in the definition of "authorised fuel", for "20(6)" substitute " 20 ".

Commencement Information
I50 S. 50 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

CHAPTER 5 S

GENERAL PURPOSE OF SEPA

51 General purpose of SEPA S

After section 20 of the Environment Act 1995, insert—

"**20A General purpose of SEPA**

(1) SEPA is to carry out the functions conferred on it by or under this Act or any other enactment for the purpose of protecting and improving the environment (including managing natural resources in a sustainable way).

(2) In carrying out its functions for that purpose SEPA must, except to the extent that it would be inconsistent with subsection (1) to do so, contribute to—

(a) improving the health and well being of people in Scotland, and

(b) achieving sustainable economic growth.

(3) In subsection (1), "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

Commencement Information
I51 S. 51 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

CHAPTER 6 S

REPORTING AND INTERPRETATION: PART 3

52 Annual report on operation of Part 3 S

The Scottish Ministers must, as soon as practicable after the end of each calendar year, lay before the Scottish Parliament a report on the operation of this Part.

Commencement Information
I52 S. 52 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

53 Meaning of "relevant offence" and "SEPA" in Part 3 S

In this Part—

"relevant offence" means an offence specified in an order made by the Scottish Ministers for the purposes of this Part,

"SEPA" means the Scottish Environment Protection Agency.

Commencement Information
I53 S. 53 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

PART 4 S

MISCELLANEOUS

VALID FROM 26/02/2015

Marine licensing decisions

54 Marine licence applications etc.: proceedings to question validity of decisions S

(1) The Marine (Scotland) Act 2010 is amended as follows.

(2) In section 38 (appeals against licensing decisions), after subsection (3) add—

"(4) The duty in subsection (1) does not apply in relation to a decision under section 29 to which section 63A applies.".

(3) After section 63, insert—

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

"Proceedings for questioning certain decisions under sections 28 and 29

63A Proceedings for questioning certain decisions under sections 28 and 29

(1) If a person is aggrieved by a decision of the Scottish Ministers to which this section applies, and wishes to question the validity of the decision on either of the grounds mentioned in subsection (2), the person (the "aggrieved person") may make an application to the Inner House of the Court of Session under this section.

(2) The grounds are that—
- (a) the decision is not within the powers of the Scottish Ministers under this Part,
- (b) one or more of the relevant requirements have not been complied with in relation to the decision.

(3) This section applies to—
- (a) a decision to cause, or not to cause, an inquiry to be held under section 28(1) in connection with the Scottish Ministers' determination of an application for a marine licence to carry on an activity in respect of which a generating station application must also be made, and
- (b) a decision under section 29 in relation to an application for a marine licence to carry on such an activity.

(4) An application under this section must be made within the period of 6 weeks beginning with the date on which the decision to which the application relates is taken.

(5) On an application under this section, the Inner House of the Court of Session—
- (a) may suspend the decision until the final determination of the proceedings,
- (b) may quash the decision either in whole or in part if satisfied that—
  - (i) the decision in question is not within the powers of the Scottish Ministers under this Part, or
  - (ii) the interests of the aggrieved person have been substantially prejudiced by failure to comply with any of the relevant requirements in relation to the decision.

(6) In this section—

"generating station application" means an application for consent under section 36 of the Electricity Act 1989 (consent for the construction etc. of generating stations);

"the relevant requirements" in relation to a decision to which this section applies, means the requirements of this Act, or of any order or regulations made under this Part, which are applicable to that decision.

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
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63B Applications under section 63A: requirement for permission

(1) No proceedings may be taken in respect of an application under section 63A(1) unless the Inner House of the Court of Session has granted permission for the application to proceed.

(2) The Court may grant permission under subsection (1) for an application to proceed only if it is satisfied that—

(a) the applicant can demonstrate a sufficient interest in the subject matter of the application, and

(b) the application has a real prospect of success.

(3) The Court may grant permission under subsection (1) for an application to proceed—

(a) subject to such conditions as the Court thinks fit, or

(b) only on such of the grounds specified in the application as the Court thinks fit.”.

Planning authorities' functions: charges and fees

55 Planning authorities' functions: charges and fees S

In section 252 of the Town and Country Planning (Scotland) Act 1997 (fees for planning applications, etc.)—

(a) in subsection (1A), after paragraph (d) insert—

“(da) make provision for the charge or fee payable to different planning authorities to be of different amounts,”,

(b) after subsection (1A) insert—

“(1AA) Provision such as mentioned in subsection (1A)(da) may be made in respect of a planning authority where the Scottish Ministers are satisfied that the functions of the authority are not being, or have not been, performed satisfactorily.

(1AB) The power to make provision such as is mentioned in subsection (1A)(da) is without prejudice to the generality of the power in section 275(2A).”,

(c) subsections (5) and (6) are repealed.

Commencement Information

I54 S. 55 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Street traders' licences

56 Application for street trader's licence: food businesses S

In section 39 of the Civic Government (Scotland) Act 1982 (street traders' licences)—

(a) in subsection (4)—

(i) for "the food " substitute " a food ",

(ii) after "1990)" insert " mentioned in subsection (4A) ",

(b) after subsection (4) insert—

"(4A) A food authority referred to in subsection (4) is a food authority in Scotland which, in respect of the activity mentioned in that subsection—

(a) has registered the establishment that carries out or intends to carry out the activity for the purposes of Article 6.2 of Regulation ECNo. 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs, or

(b) where no such food authority has registered the establishment for those purposes, a food authority which is—

(i) the licensing authority to which the application mentioned in subsection (4) in respect of the activity is made, or

(ii) another licensing authority to which an application for a street trader's licence in respect of the activity is or has been made.".

Commencement Information

I55 S. 56 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.** (with art. 3)

PART 5 S

GENERAL

57 Consequential modifications and repeals S

Schedule 3 makes minor modifications of enactments (including repealing enactments that are spent) and modifications consequential on the provisions of this Act.

Commencement Information

I56 S. 57 in force at 30.6.2014 for specified purposes by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

58 Subordinate legislation S

(1) Any power of the Scottish Ministers to make an order or regulations under this Act includes power to make—

(a) different provision for different purposes,

(b) incidental, supplemental, consequential, transitional, transitory or saving provision.

(2) The power to make regulations under section 1 includes power to modify any enactment (including this Act other than that section and sections 2, 3 and 7).

(3) The following orders are subject to the affirmative procedure—

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Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

(a) an order under section 9, 12, 20 or 23,
(b) an order under section 7 that contains provision such as is mentioned in subsection (1)(a) of that section,
(c) an order under that section that specifies under subsection (2) of that section—
(i) that a function is to be a regulatory function for the purposes of section 1, 4 or 5,
(ii) the extent to which a function is to be a regulatory function for such purposes,
(d) an order under section 59(1) which contains provisions that add to, replace or omit any part of the text of an Act.

(4) The following regulations are subject to the affirmative procedure—
(a) regulations under section 1,
(b) regulations under section 18 which contain provisions that add to, replace or omit any part of the text of an Act.

(5) All other orders and regulations under this Act are subject to the negative procedure.

(6) This section does not apply to an order under—
(a) section 61(2), or
(b) paragraph 30 of schedule 2.

59 Ancillary provision S

(1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) An order under this section may modify any enactment (including this Act), instrument or document.

60 Crown application S

(1) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.

(2) But the Court of Session may, on the application of the Scottish Ministers or any public body or office-holder having responsibility for enforcing the provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (1), any provision made by or under the provisions of this Act applies to persons in the public service of the Crown as it applies to other persons.

61 Commencement S

(1) This Part (other than section 57) comes into force on the day after Royal Assent.

(2) The remaining provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may include transitional, transitory or saving provision.

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

62 Short title S

The short title of this Act is the Regulatory Reform (Scotland) Act 2014.

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

SCHEDULE 1 S

(introduced by section 1(5))

REGULATORS FOR THE PURPOSES OF PART 1

Commencement Information
I57 Sch. 1 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Accountant in Bankruptcy
Food Standards Agency
Healthcare Improvement Scotland
Local authorities
Scottish Charity Regulator
Scottish Environment Protection Agency
Scottish Fire and Rescue Service
Scottish Housing Regulator
Scottish Natural Heritage
Social Care and Social Work Improvement Scotland
VisitScotland

SCHEDULE 2 S

(introduced by section 18)

PARTICULAR PURPOSES FOR WHICH PROVISION MAY BE MADE UNDER SECTION 18

PART 1 S

LIST OF PURPOSES

Environmental activities

1 (1) Further defining environmental activities.

(2) Modifying the definition of any of those activities.

(3) Specifying other activities as environmental activities.

Commencement Information
I58 Sch. 2 para. 1 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Emissions

2 (1) Establishing standards, objectives or requirements in relation to emissions.

(2) In relation to emissions, authorising the making of plans for—

(a) the setting of overall limits,

(b) the allocation of quotas, or

(c) the progressive improvement of standards or objectives.

(3) Authorising the making of schemes for the trading or other transfer of quotas so allocated.

Commencement Information

I59 Sch. 2 para. 2 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Regulators

3 (1) Determining the authorities (whether SEPA or any other public or local authority or the Scottish Ministers) by whom functions conferred by the regulations for or in connection with regulating regulated activities are to be exercisable (such authorities being referred to in this schedule as "regulators").

(2) Specifying any other purposes for which any such functions are to be exercisable.

(3) Enabling the Scottish Ministers to give directions (whether general or specific) with which regulators are to comply, or guidance to which regulators are to have regard, in exercising functions under the regulations, including—

(a) directions providing for any functions exercisable by one regulator to be exercisable instead by another,

(b) directions given for the purpose of the implementation of any obligations of the United Kingdom under the EU Treaties or under any international obligations to which the United Kingdom is a party,

(c) directions relating to the exercise of any function in a particular case or description of case,

(d) directions providing for any matter to which the directions relate to be determined, in such manner (if any) as the directions may specify, by a person other than the Scottish Ministers.

Commencement Information

I60 Sch. 2 para. 3 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Regulation of activities

4 (1) Prohibiting persons from carrying on, or from causing or permitting others to carry on, any regulated activity.

(2) Prohibiting persons from carrying on any regulated activity except so far as it is—

(a) authorised by or underthe regulations, and

(b) carried on in accordance with the regulations.

(3) Enabling the carrying on of regulated activities to be authorised by providing that they are to be carried on—

(a) in accordance with a permit granted by a regulator under the regulations (a "permit"),

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(b) subject to a requirement to register the carrying on of the activity with a regulator ("registration"),

(c) subject to a requirement to notify a regulator that the activity is being, or is proposed to be, carried on ("notification"),

(d) subject to compliance with rules specified in or made under the regulations ("general binding rules").

(4) Enabling the carrying on of regulated activities to be authorised by means of a permit, registration or notification whether or not the carrying on of those activities is also subject to general binding rules.

(5) Specifying a procedure under which the regulators may determine general binding rules.

(6) Treating as authorised the carrying on of regulated activities which are subject to general binding rules.

(7) Specifying the subsistence of an authorisation to carry on regulated activities which are subject to general binding rules.

Commencement Information

I61 Sch. 2 para. 4 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Permits

5 (1) Prescribing the form and content of applications for permits.

(2) Regulating the procedure to be followed in connection with—

(a) applications for permits,

(b) the determination of such applications, and

(c) the grant of permits.

Commencement Information

I62 Sch. 2 para. 5 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

6 (1) Prescribing the form and content of permits.

(2) Authorising permits to be granted subject to conditions imposed by regulators.

(3) Securing that permits have effect subject to specified conditions.

(4) Requiring persons carrying on regulated activities authorised by way of a permit to submit to regulators, in respect of specified periods and at specified intervals, such information as may be specified relating to the carrying on of the activities and compliance with any conditions subject to which the permit was granted.

Commencement Information

I63 Sch. 2 para. 6 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

7 (1) Requiring permits, or the conditions to which permits are subject, to be reviewed by regulators (whether periodically or in specified circumstances).

(2) Authorising or requiring the variation of permits or such conditions by regulators (whether on applications made by holders of permits or otherwise).

(3) Regulating the making of changes in the carrying on of the activitiesto which permits relate.

Commencement Information
I64 Sch. 2 para. 7 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

8 (1) Regulating the transfer and surrender of permits.

(2) Authorising the suspension of permits by regulators.

(3) Authorising the revocation of permits by regulators.

(4) Authorising the imposition by regulators of requirements with respect to the taking of preventive or remedial action (by holders of permits or other persons) in connection with the surrender and revocation of permits.

Commencement Information
I65 Sch. 2 para. 8 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

9 (1) Authorising, or authorising the Scottish Ministers to make schemes for, the charging by the Scottish Ministers or public or local authorities of fees or other charges in respect of—

(a) the testing or analysis of substances in cases mentioned in sub-paragraph (2),

(b) the validating of, or of the results of, any testing or analysis of substances in such cases, or

(c) assessing how the environment might be affected by the release into it of any substances in such cases.

(2) The cases are those where the testing, analysis, validating or assessing is in any way in anticipation of, or otherwise in connection with, the making of applications for the grant of permits or is carried out in pursuance of conditions to which any permit is subject.

Commencement Information
I66 Sch. 2 para. 9 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Registration

10 (1) Prescribing the form and content of—

(a) applications for registration,

(b) registration.

(2) Regulating the procedure for registration including—

(a) the procedure to be followed in connection with—

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(i) applications for registration,
(ii) the determination of such applications, and
(iii) the grant of registration, and

(b) variation, transfer, surrender, suspension and revocation of registrations.

(3) Authorising registration to be granted subject to conditions imposed by regulators.

(4) Securing that registrations have effect subject to specified conditions.

(5) Specifying restrictions or other requirements in connection with registration, including—
(a) circumstances in which registration may be refused,
(b) the subsistence of registration.

Commencement Information
I67 Sch. 2 para. 10 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Provisions common to permits and registration

11 (1) Enabling the granting of permits, or the registration of activities, authorising the carrying on of—
(a) one or more regulated activities,
(b) a regulated activity at one or more than one place.

(2) Securing that permits and registrations have effect subject to standard rules specified in or made under the regulations in respect of permits and registrations.

(3) Specifying a procedure under which regulators may determine such rules.

(4) Specifying restrictions or other requirements in connection with—
(a) applications for permits or registration,
(b) the grant of permits (including provisions for restricting the grant of permits to those who are fit and proper persons within the meaning of the regulations),
(c) the registration of regulated activities (including provision for restricting registration to the carrying on of such activities by those who are fit and proper persons within the meaning of the regulations).

(5) Specifying the circumstances in which persons or descriptions of persons may be deemed—
(a) to have control over activities the carrying on of which is authorised by grant of a permit or by registration (including complying with any conditions or requirements of the permit or registration),
(b) to be carrying on a regulated activity for the purposes of notices that may be served by regulators under paragraph 18,
(c) to be authorised to carry on a regulated activity without having applied for a permit or registration, or having given notification, in respect of that activity.

(6) Enabling the granting of a permit to, or registration of the carrying on of regulated activities by, more than one person.

(7) Enabling permits and registrations—

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(a) to be varied, transferred, surrendered, suspended or revoked wholly or in part,

(b) to be varied, suspended or revoked as mentioned in paragraph (a) in consequence of the person to whom the permit was granted or (as the case may be) who is authorised to carry on the regulated activities to which the registration relates ceasing to be a fit and proper person within the meaning of the regulations,

(c) to be consolidated.

(8) Providing for the transfer of a permit or registration to be refused if the person to whom it is proposed to be transferred is not a fit and proper person within the meaning of the regulations.

Commencement Information

I68 Sch. 2 para. 11 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Notification of regulated activities

12 (1) Prescribing the form and content of notifications and otherwise regulating the procedure for notifying the carrying on or proposed carrying on of regulated activities.

(2) Specifying restrictions or other requirements in connection with notifications, including—

(a) the subsistence of a notification,

(b) the subsistence of an authorisation to carry on a regulated activity in respect of which the notification is given.

Commencement Information

I69 Sch. 2 para. 12 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Charging schemes

13 (1) Authorising, or authorising regulators to make, vary and revoke schemes for the charging by regulators of fees or other charges—

(a) in respect of, or in respect of applications for—

(i) the grant of a permit,

(ii) the variation of a permit or the conditions to which it is subject,

(iii) the transfer, surrender or revocation of a permit,

(iv) registration,

(v) the variation, transfer, surrender or revocation of registration,

(b) in respect of the subsistence of a permit or registration,

(c) in respect of consolidation of permits and registrations,

(d) in respect of notifications,

(e) in respect of other specified matters.

(2) Regulating the procedure for making, varying and revoking such schemes.

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

Commencement Information
I70 Sch. 2 para. 13 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Information, publicity and consultation

14 Enabling persons of any specified description (whether or not they are holders of permits or carrying on activities that are subject to registration, a requirement of notification or general binding rules) to be required—
(a) to provide such information in such manner as is specified in the regulations,
(b) to compile information—
(i) on emissions,
(ii) on energy consumption and on the efficiency with which energy is used,
(iii) on waste and on the origins and destinations of waste.

Commencement Information
I71 Sch. 2 para. 14 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

15 Securing that—
(a) publicity is given to specified matters,
(b) regulators maintain registers of specified matters (but excepting information which under the regulations is, or is determined to be, commercially confidential and subject to any other exceptions specified in the regulations) which are open to public inspection,
(c) regulators publish, in a manner specified in the regulations, such registers,
(d) copies of entries in such registers, or of specified documents, may be obtained by members of the public.

Commencement Information
I72 Sch. 2 para. 15 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

16 Requiring or authorising regulators to carry out consultation in connection with the exercise of any of their functions (including consultation on any guidance they propose to issue in connection with the exercise of those functions), and providing for them to take into account representations made to them on consultation.

Commencement Information
I73 Sch. 2 para. 16 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Enforcement and offences

17 (1) Conferring functions on regulators with respect to compliance with, and enforcement of, the regulations.

(2) Conferring power on regulators—

(a) to arrange for preventive or remedial action to be taken at the expense of persons carrying on regulated activities,

(b) to require such persons to provide such financial security as the regulators making the arrangements consider appropriate pending the taking of the preventative or remedial action.

(3) Authorising regulators to appoint suitable persons to exercise the functions mentioned in sub-paragraph (1) and the powers in sub-paragraph (2); and conferring powers (such as those specified in section 108(4) of the Environment Act 1995 (powers of entry, etc.)) on persons so appointed.

(4) Regulating the procedure under which regulators may make arrangements, or impose requirements, such as are mentioned in sub-paragraph (2).

Commencement Information

I74 Sch. 2 para. 17 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

18 (1) Authorising regulators to serve on any persons carrying on regulated activities (whether or not the carrying on of those activities is authorised by or under the regulations) notices, including notices requiring such persons—

(a) to notify the regulated activities being carried on by them,

(b) to take preventative or remedial action at their own expense, including such action in respect of contraventions (actual or potential) of authorisations, or conditions of authorisations, relating to the regulated activities,

(c) to provide such financial security as the regulators serving the notices consider appropriate pending the taking of preventative or remedial action required by virtue of paragraph (b),

(d) to take steps to remove imminent risks of serious adverse impacts on the environment (whether or not arising from any contraventions such as are mentioned in paragraph (b)),

(e) to stop the carrying on of regulated activities (whether or not the notice also requires the person to take such preventative or remedial action as may be specified in the notice).

(2) Authorising regulators, where such notices are not complied with by persons on whom they are served—

(a) to take, or arrange for the taking of, preventative or remedial action at the expense of those persons,

(b) to impose monetary penalties on those persons.

(3) Authorising regulators who serve such notices to require the persons on whom the notice is served to pay the cost incurred by the regulators in relation to the service of the notice up to the time of its service.

(4) Providing for the enforcement of such notices by civil proceedings.

(5) Specifying a procedure under which monetary penalties such as are mentioned in sub-paragraph (2)(b) may be imposed.

(6) Authorising regulators, where they are required by virtue of such a procedure to serve a notice, to require the person on whom the notice is served to pay the costs incurred by the regulators in relation to the service of the notice up to the time of its service.

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

(7) Providing for the enforcement of such notices by civil proceedings.

Commencement Information
I75 Sch. 2 para. 18 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

19 Creating offences and dealing with matters relating to such offences, including—
(a) the provision of defences, and
(b) evidentiary matters.

Commencement Information
I76 Sch. 2 para. 19 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

20 Enabling, where a person has been convicted of an offence under the regulations, a court dealing with that person for the offence to order the taking of remedial action (in addition to or instead of imposing any punishment).

Commencement Information
I77 Sch. 2 para. 20 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Appeals

21 (1) Conferring rights of appeal in respect of decisions made, notices served or other things done (or omitted to be done) under the regulations.

(2) Making provision for (or for the determination of) matters relating to the making, considering and determination of such appeals (including provision for or in connection with the holding of inquiries or hearings).

Commencement Information
I78 Sch. 2 para. 21 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

General

22 (1) Making provision which, subject to any modifications that the Scottish Ministers consider appropriate, corresponds or is similar to—
(a) any provision made by or under, or capable of being made under, Part 2 of the Environmental Protection Act 1990, or
(b) any provision made, or capable of being made, under section 2(2) of the European Communities Act 1972 in connection with an EU obligation relating to protecting and improving the environment.

(2) Making provision about the application of the regulations to the Crown.

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

Commencement Information
I79 Sch. 2 para. 22 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

PART 2 S

SUPPLEMENTARY PROVISIONS

Particular types of regulated activity

23 The regulations may provide for specified provisions of the regulations to have effect in relation only to—
(a) specified regulated activities,
(b) the carrying on of regulated activities in specified circumstances, or
(c) the carrying on of regulated activities by specified persons or descriptions of persons.

Commencement Information
I80 Sch. 2 para. 23 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Emissions trading scheme

24 (1) The regulations may authorise the inclusion in a trading scheme of—
(a) provision for penalties in respect of contraventions of provisions of the scheme,
(b) provision for the amount of any penalty under the scheme to be such as may be set out in, or calculated in accordance with—
(i) the scheme, or
(ii) the regulations (including regulations made after the scheme).

(2) In this paragraph, "trading scheme" means a scheme of the kind mentioned in paragraph 2(3).

Commencement Information
I81 Sch. 2 para. 24 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

General binding rules

25 (1) General binding rules may—
(a) impose conditions or requirements,
(b) prescribe standards or objectives to be complied with or achieved, and
(c) require standards or objectives specified in or under other enactments to be complied with or achieved.

(2) Before determining any general binding rules in accordance with a procedure specified under paragraph 4(5), a regulator must—

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Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

(a) publish a draft of the proposed rules,

(b) publicise the opportunity to make representations about the proposed rules under sub-paragraph (3) in such manner as the regulator thinks fit,

(c) make copies of the proposed rules available for public inspection for such period, which must be at least 28 days, as the regulator may determine.

(3) Any person who wishes to make representation about the proposed rules to the regulator may do so within the period determined under sub-paragraph (2)(c).

(4) The regulator must, in determining the rules, have regard to any representations on the proposed rules received by the regulator within that period.

Commencement Information

I82 Sch. 2 para. 25 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Determination of matters by regulators

26 The regulations may make provision for anything which, by virtue of paragraphs 5 to 12, could be provided for by the regulations to be determined under the regulations by regulators.

Commencement Information

I83 Sch. 2 para. 26 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Determination of rules and imposition of conditions

27 The regulations may provide—

(a) for regulators to have regard to any specified general principles, and to any directions or guidance given under the regulations—

(i) in determining any general binding rules,

(ii) in imposing any conditions as mentioned in paragraph 6(2) or 10(3),

(iii) in setting any standard rules they may make by virtue of paragraph 11(2),

(b) for such guidance to include the sanctioning of reliance by a regulator on any arrangements referred to in the guidance to operate to secure a particular result as an alternative to imposing any such conditions,

(c) for such conditions to be imposed by reference to agreements between or among persons authorised to carry on regulated activities as to the carrying on by them of the activities.

Commencement Information

I84 Sch. 2 para. 27 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Charging schemes

28 The regulations may—

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

(a) require any such scheme as is mentioned in paragraph 9 or 13 to be so framed that the fees and charges payable under the scheme—
  (i) are determined in the light of any specified general principles and any directions or guidance given under the regulations,
  (ii) are sufficient, taking one year with another, to cover such expenditure (whether or not incurred by the regulator to whom they are so payable) as is specified,
(b) authorise any such scheme to make different provision for different cases (and specify particular kinds of such cases).

Commencement Information
I85 Sch. 2 para. 28 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Fit and proper persons

29 The regulations may make provision that the conditions subject to which a registration or permit has effect include a condition that the person authorised to carry on the regulated activities to which the registration relates, or to whom the permit is granted, must remain a fit and proper person within the meaning of the regulations.

Commencement Information
I86 Sch. 2 para. 29 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Power to specify EU instruments for the purposes of paragraph 22

30 The Scottish Ministers may, for the purposes of paragraph 22(1)(b), by order specify an EU instrument as one that is or contains an EU obligation mentioned in that paragraph.

Commencement Information
I87 Sch. 2 para. 30 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Offences

31 (1) The regulations may provide for any such offence as is mentioned in paragraph 19 to be triable—
  (a) only summarily,
  (b) either summarily or on indictment.

(2) The regulations may provide for such an offence to be punishable—
  (a) on summary conviction by—
    (i) imprisonment for a term not exceeding such period as is specified (which must not exceed 12 months),
    (ii) a fine not exceeding such amount as is specified (which must not exceed £40,000), or

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(iii) both,

(b) on conviction on indictment by—

(i) imprisonment for a term not exceeding such period as is specified (which must not exceed 5 years),

(ii) a fine, or

(iii) both.

(3) The regulations may provide for continuing offences and for any such offences to be punishable by a daily or other periodic fine of such amount as is specified (in addition to any punishment provided for in pursuance of sub-paragraph (2)).

(4) The Scottish Ministers may by order substitute for the sum for the time being specified in sub-paragraph (2)(a)(ii) such other sum as appears to them to be justified by a change in the value of money appearing to them to have taken place since the last occasion on which the sum was fixed.

(5) An order under sub-paragraph (4) is not to affect the punishment for an offence committed before that order comes into force.

Commencement Information

I88 Sch. 2 para. 31 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Service of notices

32 The regulations may make provision for or in connection with the service of any notice or other document required under the regulations to be served on or given to any person.

Commencement Information

I89 Sch. 2 para. 32 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Powers exercisable in the regulations

33 The regulations may—

(a) modify any enactment, instrument or document,

(b) in making different provision for different purposes, make different provision for different cases, persons, circumstances or areas,

(c) contain provision for the delegation of functions,

(d) impose requirements in relation to any standards or other matters set out in such documents as may be specified in the regulations.

Commencement Information

I90 Sch. 2 para. 33 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Interpretation

34 In this schedule—

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
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"authorise", in relation to regulated activities, means authorise the carrying on of the activities in accordance with a permit, subject to registration, subject to notification or subject to compliance with general binding rules; and related expressions are to be construed accordingly,

"functions" includes powers and duties,

"general binding rules" means rules specified in or made under the regulations in pursuance of paragraph 4(3)(d),

"notification" means notification of the carrying on of, or of a proposal to carry on, a regulated activity in accordance with any provision made in the regulations in pursuance of paragraph 4(3)(c),

"permit" means a permit granted under any provision made in the regulations in pursuance of paragraph 4(3)(a),

"registration" means registration under any provision made in the regulations in pursuance of paragraph 4(3)(b),

"the regulations" means regulations under section 18,

"regulated activities" has the meaning given in section 17(3),

"regulators" has the meaning given in paragraph 3(1),

"specified" means specified in the regulations.

Commencement Information

I91 Sch. 2 para. 34 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

SCHEDULE 3 S

(introduced by section 57)

MINOR AND CONSEQUENTIAL MODIFICATIONS

PART 1 S

REGULATION OF ENVIRONMENTAL ACTIVITIES ETC.

PROSPECTIVE

Sewerage (Scotland) Act 1968

1 (1) The Sewerage (Scotland) Act 1968 is amended as follows.

(2) In section 29A (priority substances etc.), in subsection (3)—

(a) the word "or" immediately following paragraph (a) is repealed, and

(b) for paragraph (b) substitute—

"(b) regulations made under section 18 of the Regulatory Reform (Scotland) Act 2014, or

(c) any directive concerning the same subject-matter as the directive mentioned in subsection (1).".

(3) In section 38H (Controlled Activities Regulations), for subsection (3)(b) substitute—

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

"(b) regulations made under section 18 of the Regulatory Reform (Scotland) Act 2014.".

Prevention of Oil Pollution Act 1971

2 In section 11A of the Prevention of Oil Pollution Act 1971 (certain provisions not to apply where discharge or escape authorised under certain enactments), in subsection (1), after "1999" insert " or section 18 of the Regulatory Reform (Scotland) Act 2014 ".

Commencement Information
I92 Sch. 3 para. 2 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Environmental Protection Act 1990

3 (1) The Environmental Protection Act 1990 is amended as follows.

(2) In section 35 (waste management licences: general), in subsection (11A), after "1999" insert " or by an authorisation under regulations under section 18 of the Regulatory Reform (Scotland) Act 2014 ".

(3) In section 46 (receptacles for household waste), in subsection (4)—
(a) the word "and" immediately following paragraph (d) is repealed,
(b) after paragraph (e) add—
"(f) the removal of the receptacles placed for the purpose of facilitating the emptying of them; and
(g) the time when the receptacles must be placed for that purpose and removed.".

(4) In section 47 (receptacles for commercial or industrial waste), in subsection (4)—
(a) the word "and" immediately following paragraph (d) is repealed,
(b) after paragraph (e) add—
"(f) the removal of the receptacles placed for the purpose of facilitating the emptying of them; and
(g) the time when the receptacles must be placed for that purpose and removed.".

(5) In section 79 (statutory nuisances and inspections therefor), in subsection (10), after "1999" insert " or section 18 of the Regulatory Reform (Scotland) Act 2014 ".

Commencement Information
I93 Sch. 3 para. 3 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Clean Air Act 1993

4 (1) The Clean Air Act 1993 is amended as follows.

(2) In section 31 (regulations about sulphur content of oil fuel for furnaces or engines), in subsection (4)—

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

(a) in paragraph (a)—

(i) the word "or" immediately following sub-paragraph (i) is repealed,

(ii) after sub-paragraph (ii) insert "; or

(iii) part of an activity subject to regulation by the Scottish Environment Protection Agency under regulations under section 18 of the Regulatory Reform (Scotland) Act 2014;",

(b) in paragraph (b), after "sub-paragraph (ii)" insert " or (iii) ".

(3) In section 33 (cable burning), in subsection (1), after "1999" insert " or section 18 of the Regulatory Reform (Scotland) Act 2014 ".

(4) In section 35 (obtaining information), in subsection (3), after "1999" insert " or section 18 of the Regulatory Reform (Scotland) Act 2014 ".

(5) In section 36 (notices requiring information about air pollution), in subsection (2A) after "1999" insert " or to an activity subject to regulation by the Scottish Environment Protection Agency under regulations under section 18 of the Regulatory Reform (Scotland) Act 2014 ".

(6) In section 41A (relation to Pollution Prevention and Control Act 1999)—

(a) in subsection (1), after "activities)" insert " or section 18 of the Regulatory Reform (Scotland) Act 2014 ",

(b) in subsection (2)—

(i) in paragraph (a), after "permit" insert " or authorisation ",

(ii) in paragraph (b), after "permit" insert " or authorisation ",

(c) in subsection (3)—

(i) the words from "permit" to the end of the subsection become paragraph (a) of that subsection,

(ii) after that paragraph insert "; and

(b) "authorisation" means an authorisation under regulations made under section 18 of the Regulatory Reform (Scotland) Act 2014, and the reference to an appeal is to an appeal under those regulations.".

(7) In the title to section 41A, after "1999" insert " and Regulatory Reform (Scotland) Act 2014 ".

Commencement Information

I94 Sch. 3 para. 4 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Environment Act 1995

5 (1) The Environment Act 1995 is amended as follows.

(2) In section 56 (interpretation of Part 1), in the definition of "environmental licence" in relation to SEPA, after paragraph (aa) insert—

"(ab) an authorisation under regulations under section 18 of the Regulatory Reform (Scotland) Act 2014,".

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

(3) In section 108 (powers of enforcing authorities and persons authorised by them), in subsection (15), in paragraph (n) of the definition of "pollution control functions" in relation to SEPA, after "1999" insert " or section 18 of the Regulatory Reform (Scotland) Act 2014 ".

(4) In section 114 (power of the Scottish Ministers to delegate functions of determining, or to refer matters involved in, appeals), in subsection (2)(a)(viii), after "Scotland" insert " or under section 18 of the Regulatory Reform (Scotland) Act 2014 ".

Commencement Information
I95 Sch. 3 para. 5 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

VALID FROM 01/10/2015

Merchant Shipping Act 1995

6 In section 136A of the Merchant Shipping Act 1995 (discharges etc. authorised under other enactments), after "1999" insert " or an authorisation under regulations under section 18 of the Regulatory Reform (Scotland) Act 2014 ".

Pollution Prevention and Control Act 1999

7 In the Pollution Prevention and Control Act 1999, in section 1 (general purpose of section 2 and definitions)—

(a) paragraph (a) is repealed,

(b) in paragraph (b), the words ", otherwise in pursuance of that Directive," are repealed.

Commencement Information
I96 Sch. 3 para. 7 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Water Environment and Water Services (Scotland) Act 2003

8 (1) The Water Environment and Water Services (Scotland) Act 2003 is amended as follows.

(2) In section 2 (the general duties), in subsection (8), in the definition of "the relevant enactments", after "Part" insert " , Part 3 of the Regulatory Reform (Scotland) Act 2014 ".

(3) Section 20 (regulation of controlled activities) is repealed.

(4) Section 21 (controlled activities regulations: procedure) is repealed.

(5) In section 22 (remedial and restoration measures)—

(a) in subsection (2)(a), the words "(as defined in section 20(6))" are repealed,

(b) after subsection (3) insert—

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Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

"(4) In subsection (2)(a), "pollution" in relation to the water environment means the direct or indirect introduction, as a result of human activity, of substances or heat into the water environment, or any part of it, which may give rise to any harm; and "harm" means—

(a) harm to the health of human beings or other living organisms,

(b) harm to the quality of the water environment, including—

(i) harm to the quality of the water environment taken as a whole,

(ii) other impairment of, or interference with the quality of aquatic ecosystems or terrestrial ecosystems directly depending on aquatic ecosystems,

(c) offence to the senses of human beings,

(d) damage to property, or

(e) impairment of, or interference with, amenities or other legitimate uses of the water environment.".

(6) In section 23 (fixing of charges for water services)—

(a) in paragraph (a) of subsection (4), the words "(as defined in section 20(6))" are repealed,

(b) after that subsection insert—

"(5) In subsection (4)(a), "abstraction" means the doing of anything by which any water is removed or diverted by mechanical means, pipe or any engineering structure or works from any part of the water environment, whether temporarily or permanently, including anything by which the water is so removed or diverted for the purpose of being transferred to another part of the water environment, and includes—

(a) the construction or extension of any well, borehole, water intake or other work by which water may be abstracted,

(b) the installation or modification of any machinery or apparatus by which additional quantities of water may be abstracted by means of a well, borehole, water intake or other work.".

(7) In section 28 (interpretation of Part 1), the definition of "controlled activity" is repealed.

(8) In section 36 (orders and regulations)—

(a) in each of subsections (3), (5) and (6) the word "20," is repealed,

(b) in subsection (4), paragraph (b) and the "or" immediately preceding it are repealed.

(9) In schedule 1 (matters to be included in river basin management plans), in paragraph 10(b), for the words "schedule 2" substitute " paragraph 3(1) of schedule 2 to the Regulatory Reform (Scotland) Act 2014 ".

(10) Schedule 2 (controlled activities regulations: particular purposes) is repealed.

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Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

Commencement Information
I97 Sch. 3 para. 8(1)(2) in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Water Services etc. (Scotland) Act 2005

9 In section 25 of the Water Services etc. (Scotland) Act 2005 (sewerage nuisance: code of practice), in subsection (9), after "(c.24)" insert " or by an authorisation under regulations made under section 18 of the Regulatory Reform (Scotland) Act 2014 ".

Commencement Information
I98 Sch. 3 para. 9 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

PROSPECTIVE

Water Resources (Scotland) Act 2013

10 (1) The Water Resources (Scotland) Act 2013 is amended as follows.

(2) In section 5 (qualifying abstraction), in subsection (2), for the words from "20(3)(b)" to the end of the subsection substitute " 23(5) of the 2003 Act. ".

(3) In section 21 (Controlled Activities Regulations), for subsection (5)(b) substitute—

"(b) regulations made under section 18 of the Regulatory Reform (Scotland) Act 2014.".

(4) In section 50 (Controlled Activities Regulations), for subsection (5)(b) substitute—

"(b) regulations made under section 18 of the Regulatory Reform (Scotland) Act 2014.".

PART 2 S

ENFORCEMENT OF REGULATIONS ON ENVIRONMENTAL ACTIVITIES ETC.

Environmental Protection Act 1990

11 (1) The Environmental Protection Act 1990 is amended as follows.

(2) In section 33A (fixed penalty notices for contraventions of section 33(1)(a) and (c): Scotland)—

(a) in subsection (1), in paragraph (a)—

(i) for the words "officer of a local authority" substitute " person or a constable ",

(ii) the words from "in" to the end of paragraph (b) are repealed,

(b) in subsection (4), paragraph (b) and the word "or" immediately preceding it are repealed,

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Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

(c) after subsection (8) insert—

"(8A) If an authorised person proposes to give a person a notice under this section, the authorised person may require the person to give him his name and address.

(8B) A person commits an offence if he fails to give his name and address when required to do so under subsection (8A) above.

(8C) A person who commits an offence under subsection (8B) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.",

(d) in subsection (11), in paragraph (a), for the words from "the" where it first occurs to "committed" substitute " a proper officer ",

(e) after subsection (11) insert—

"(11A) In subsection (11) above, "proper officer" means—

(a) in a case where a notice under this section is given by an officer of a local authority authorised as mentioned in paragraph (a) of the definition of "authorised person" in subsection (13) below, the officer who has, as respects the authority, the responsibility mentioned in section 95 of the Local Government (Scotland) Act 1973 (financial administration);

(b) in a case where a notice under this section is given by an officer of Loch Lomond and The Trossachs National Park Authority authorised as mentioned in paragraph (b) of that definition, the proper officer for that Authority appointed under paragraph 12(3) of schedule 2 to the National Parks (Scotland) Act 2000.",

(f) in subsection (12)—

(i) after "payable", where it second occurs, insert—

"(a) in a case such as is mentioned in paragraph (a) of subsection (11A) above,",

(ii) at the end insert—

"(b) in a case such as is mentioned in paragraph (b) of that subsection, to Loch Lomond and The Trossachs National Park Authority; and as respects the sums received by that Authority, those sums shall accrue to that Authority.",

(g) in subsection (13)—

(i) for the definition of "authorised officer" substitute—

""authorised person" means—

(a) an officer of a local authority who is authorised in writing by the authority for the purpose of issuing notices under this section in relation to a relevant offence committed in the area of the authority;

(b) an officer of Loch Lomond and The Trossachs National Park Authority who is authorised in writing by the Authority for the purpose of issuing notices under this section in relation to a

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relevant offence committed in the area designated as the National Park for which the Authority is established; or

(c) such other persons as may be specified by order made by the Scottish Ministers.",

(ii) the definition of "proper officer" is repealed,

(h) after subsection (13) insert—

"(13A) The Scottish Ministers may by order make such modifications of this section as they consider necessary or expedient in connection with the specification of a person by an order under paragraph (c) of the definition of "authorised person" in subsection (13) above.

(13B) An order under subsection (13A) above may include provision—

(a) applying any provision of this section to such a person with such modifications as may be specified in the order;

(b) for any such provision not to apply in relation to such a person.".

(3) In section 59 (power to require removal of waste unlawfully deposited), after subsection (8B) insert—

"(8C) An authority may not recover costs under subsection (8) above if a compensation order has been made under section 249 of the Criminal Procedure (Scotland) Act 1995 in favour of the authority in respect of any part of those costs.

(8D) Subsection (8C) does not apply if the compensation order is set aside on appeal.".

(4) In section 88 (fixed penalty notices for leaving litter)—

(a) in subsection (1), in paragraph (a)—

(i) for the words "officer of a litter authority" substitute " person or a constable ",

(ii) the words from "in" to the end of paragraph (b) are repealed,

(b) in subsection (5A), for the words "to the litter authority in whose area the offence was committed" substitute—

"(a) where the notice is given by an officer of a litter authority authorised as mentioned in paragraph (a) of the definition of "authorised person" in subsection (10) below, to that litter authority;

(b) where the notice is given by an officer of Loch Lomond and The Trossachs National Park Authority authorised as mentioned in paragraph (b) of that definition, to that Authority.",

(c) in subsection (6)—

(i) the words from "a litter" to the end become paragraph (a) of that subsection, and

(ii) after that paragraph insert—

"(b) Loch Lomond and The Trossachs National Park Authority, shall accrue to that Authority.",

(d) in subsection (8), in paragraph (a)(ii), for the words from "the" where it first occurs to "committed" substitute " a proper officer ",

(e) after subsection (8) insert—

"(8A) In subsection (8) above, "proper officer" means—

(a) in a case where a notice under this section is given as mentioned in paragraph (a) of subsection (5A) above, the officer who has, as respects the litter authority, the responsibility mentioned in section 95 of the Local Government (Scotland) Act 1973 (financial administration);

(b) in a case where a notice is given as mentioned in paragraph (b) of that subsection, the proper officer for that Authorityappointed under paragraph 12(3) of schedule 2 to the National Parks (Scotland) Act 2000.

(8B) If an authorised person proposes to give a person a notice under this section, the authorised person may require the person to give him his name and address.

(8C) A person commits an offence if he fails to give his name and address when required to do so under subsection (8B) above.

(8D) A person who commits an offence under subsection (8C) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.",

(f) in subsection (10)—

(i) for the definition of "authorised officer" substitute—

""authorised person" means—

(a) an officer of a litter authority who is authorised in writing by the authority for the purpose of issuing notices under this section in relation to an offence under section 87 above committed in the area of the authority;

(b) an officer of Loch Lomond and The Trossachs National Park Authority who is authorised in writing by the Authority for the purpose of issuing notices under this section in relation to an offence under section 87 above committed in the area designated as the National Park for which the Authority is established; or

(c) such other persons as may be specified by order made by the Scottish Ministers.",

(ii) the definition of "proper officer" is repealed,

(g) after subsection (10) insert—

"(10A) The Scottish Ministers may by order make such modifications of this section as they consider necessary or expedient in connection with the specification of a person by an order under paragraph (c) of the definition of "authorised person" in subsection (10) above.

(10B) An order under subsection (10A) above may include—

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(a) provision applying any provision of this section to such a person with such modifications as may be specified in the order;

(b) provision for any such provision not to apply in relation to such a person.”.

Commencement Information

I99 Sch. 3 para. 11(1)-(3) in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Criminal Procedure (Scotland) Act 1995

12 In section 249 of the Criminal Procedure (Scotland) Act 1995 (compensation order against convicted person), after subsection (10) add—

“(11) This section is subject to section 34 of the Regulatory Reform (Scotland) Act 2014.”.

Commencement Information

I100 Sch. 3 para. 12 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Reservoirs (Scotland) Act 2011

13 (1) The Reservoirs (Scotland) Act 2011 is amended as follows.

(2) Sections 78 to 81 (enforcement undertakings, fixed monetary penalties, fixed monetary penalties: procedure and fixed monetary penalties: criminal proceedings and conviction, etc.) are repealed.

(3) In section 82 (further enforcement measures)—

(a) in subsection (4)—

(i) for the word “any” substitute “ either ”,

(ii) paragraph (a) is repealed,

(b) in subsection (5), the definition of “variable monetary penalty” is repealed.

(4) In section 83 (further enforcement measure: procedure), subsections (6)(b) and (7)(c) are repealed.

(5) In section 84 (further enforcement measures: criminal proceedings and conviction), subsection (3)(b) is repealed.

(6) In section 86 (consultation in relation to certain orders), in subsection (1), paragraphs (b) and (c) are repealed.

(7) In the title of section 86, the words “, 78(1), 79(1)” are omitted.

(8) In section 87 (guidance as to use of stop notices, etc.), paragraphs (b) and (c) are repealed,

(9) In the title of section 87, the words “, fixed monetary penalties” are omitted.

(10) In section 89 (guidance: appeals), the words “, 78, 80,” are repealed.

(11) In section 90 (publication of enforcement action)—
  (a) in subsection (2), paragraph (b) is repealed,
  (b) in subsection (3) the words “, fixed monetary penalty” are repealed.

(12) In section 114 (orders and regulations), in subsection (4)(f), the words “, 78(1), 79(1)” are repealed.

(13) In the schedule (index of defined expressions), the entries in the first column relating to “enforcement undertaking” and “fixed monetary penalty”, and the corresponding interpretation provisions in the second column, are repealed.

Commencement Information
I101 Sch. 3 para. 13 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

PART 3 S

PURPOSES OF SEPA

Environment Act 1995

14 (1) The Environment Act 1995 is amended as follows.

(2) In section 31 (guidance on sustainable development and other aims and objectives), after subsection (2) insert—

“(2A) The Scottish Ministers may give guidance to SEPA with respect to the carrying out of its duties under section 20A.”.

(3) In the title to section 31, after “on” insert “ SEPA's general purpose and on ”.

(4) Section 32 (general environmental and recreational duties) is repealed.

(5) In section 33 (general duties with respect to pollution)—
  (a) subsections (1), (4) and (5) are repealed,
  (b) in subsection (2)—
    (i) for “shall” substitute “ may ”,
    (ii) in paragraph (a), the words “pollution control” are repealed,
    (iii) in paragraph (b), the words “pollution of” are repealed,
    (iv) for “such pollution” substitute “ the general state of the environment ”.

(6) The title to section 33 becomes “ **General duties as respects the state of the environment and effects of pollution** ”.

(7) Section 34 (general duties with respect to water) is repealed.

(8) Section 36 (codes of practice with respect to environmental and recreational duties) is repealed.

(9) In section 39 (general duty of the new Agencies to have regard to the costs and benefits in exercising powers)—

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(a) in subsection (1), for "Each new" substitute " The ",
(b) in subsection (2), for "a new" substitute " the ".

(10) In the title to section 39, for the words "new Agencies" substitute " Agency ".

(11) In section 81 (functions of the new Agencies), in subsection (2)—
(a) the word "means" is repealed,
(b) at the beginning of paragraph (a) insert " means ",
(c) in paragraph (b), for the words from "the functions" to the end of the paragraph, substitute " has the same meaning as in section 108(15) below in relation to SEPA ".

Commencement Information
I102 Sch. 3 para. 14 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Water Industry (Scotland) Act 2002

15 In schedule 7 to the Water Industry (Scotland) Act 2002 (modifications of other enactments), paragraph 24(2) is repealed.

Commencement Information
I103 Sch. 3 para. 15 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

PART 4 S

CONTROL OF POLLUTION ACT 1974

16 (1) The Control of Pollution Act 1974 is amended as follows.

(2) The following provisions are repealed—
(a) section 30B (classification of quality waters),
(b) section 30C (water quality objectives),
(c) section 30D (general duties to achieve and maintain objectives, etc.),
(d) section 30E (consultation and collaboration),
(e) section 31B (nitrate sensitive areas),
(f) section 31C (registering of agreement),
(g) section 41 (registers),
(h) section 42A (exclusion from registers of information affecting national security),
(i) section 42B (exclusion from registers of certain confidential information),
(j) section 43 (control of discharges into sewers),
(k) section 44 (provisions supplementary to section 43),
(l) section 45 (early variation of conditions of discharges),
(m) section 52 (charges in respect of certain discharges in England and Wales),
(n) section 57 (periodical inspections by local authorities),
(o) sections 63 to 67 (noise abatement zones),

(p) section 69 (execution of works by local authority),

(q) in section 87 (miscellaneous provisions relating to legal proceedings), subsection (3),

(r) section 88 (civil liability for contravention of section 3(3)),

(s) section 90 (establishment charges and interest in respect of certain expenses of authorities),

(t) section 101 (disposal of waste etc. by Atomic Energy Authority),

(u) Schedule 1 (noise abatement zones), and

(v) Schedule 1A (orders designating nitrate sensitive areas: Scotland).

(3) In section 30Y (introductory), in subsection (1) (meaning of "abandonment" in relation to a mine), in paragraph (b)—

(a) the word "or" immediately following sub-paragraph (i) is repealed,

(b) after sub-paragraph (ii) insert "or

(iii) any disclaimer by notice signed by the Queen's and Lord Treasurer's Remembrancer under section 1013 of the Companies Act 2006 (Crown disclaimer of property vesting as *bona vacantia*).".

(4) In section 51 (codes of good agricultural practice), in subsection (2), the words from "but" to the end of the subsection are repealed.

(5) In section 55A (regulations under Part 2), the words "and sections 43 to 45" are repealed.

(6) In section 56 (interpretation etc. of Part 2)—

(a) in subsection (1)—

(i) in the definition of "coastal waters", "controlled waters", "ground waters", "inland waters" and "relevant territorial waters", for the words from the beginning to "meanings" substitute " "controlled waters" has the meaning ",

(ii) the definitions of "effluent", "micro-organism", "operations", "sewage effluent", "substance" and "trade effluent" are repealed,

(b) subsections (3), (5) and (6) are repealed.

(7) In section 73 (interpretation and other supplementary provisions)—

(a) in subsection (1), the definitions of the following expression are repealed—

(i) "noise abatement order" and "noise abatement zone",

(ii) "noise level register",

(iii) "noise reduction notice", and

(iv) "person responsible",

(b) in subsection (2), for the words "sections 62 to 67" in both places where they occur, substitute " section 62 ".

(8) In section 74 (penalties)—

(a) in subsection (1), in paragraph (a), the words "in the case of a first offence against this Part of this Act," are repealed,

(b) the words from "; and" immediately following that paragraph to the end of the section are repealed.

(9) In section 104 (orders and regulations)—

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(a) in subsection (1), the following words are repealed—
(i) "(except sections 63 and 65(6))", and
(ii) "regulations made by virtue of section 18 of this Act or",
(b) in subsection (2), the following words are repealed—
(i) "regulations shall be made by virtue of section 18 of this Act and no", and
(ii) "regulations or".

(10) In section 105 (interpretation etc. – general), in subsection (1), the definition of "trade effluent" is repealed.

Commencement Information
I104 Sch. 3 para. 16 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

PART 5 S

MISCELLANEOUS ENACTMENTS

Scottish Board of Health Act 1919

17 In the Scottish Board of Health Act 1919, in section 4 (transfer of powers and duties to and from the Board), paragraph (d) of subsection (1) is repealed.

Commencement Information
I105 Sch. 3 para. 17 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Local Government (Scotland) Act 1973

18 In the Local Government (Scotland) Act 1973, in Schedule 27 (adaptation and amendment of enactments), paragraphs 146 to 148 are repealed.

Commencement Information
I106 Sch. 3 para. 18 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Local Government, Planning and Land Act 1980

19 In the Local Government, Planning and Land Act 1980, in Schedule 2 (relaxation of controls over functions relating to clean air and pollution), paragraphs 10, 14 and 18 are repealed.

Commencement Information
I107 Sch. 3 para. 19 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Litter Act 1983

20 In the Litter Act 1983—

(a) in section 4 (consultation and proposals for abatement of litter), subsections (4), (4ZA), (4A) and (5) are repealed,

(b) in section 9 (orders), subsection (3) is repealed,

(c) in section 13 (short title, commencement and extent), in subsection (4), the words "4(4)," are repealed.

Commencement Information

I108 Sch. 3 para. 20 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Water Act 1989

21 In the Water Act 1989, in Schedule 23 (control of water pollution in Scotland), paragraphs 2 and 3 are repealed.

Commencement Information

I109 Sch. 3 para. 21 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Planning (Consequential Provisions) Act 1990

22 In the Planning (Consequential Provisions) Act 1990, in Schedule 2 (consequential amendments), paragraph 31(1) is repealed.

Commencement Information

I110 Sch. 3 para. 22 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Environmental Protection Act 1990

23 In the Environmental Protection Act 1990—

(a) in section 79 (statutory nuisances and inspections therefor), in subsection (10), the words from "Part I" to "under", where it third occurs, are repealed,

(b) in section 80 (summary proceedings for statutory nuisances)—

(i) in paragraph (a) of subsection (9), the words "or 65" are repealed,

(ii) paragraph (b) of that subsection, and the word "or" immediately preceding it, are repealed,

(iii) paragraph (c) of that subsection, and the word "or" immediately preceding it, are repealed,

(iv) subsection (10) is repealed,

(c) section 84 (termination of Public Health Act controls over offensive trades, etc.) is repealed,

(d) section 145 (penalties for offences of polluting controlled waters, etc.) is repealed,

(e) in Schedule 15 (consequential and minor amendments of enactments)—

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(i) paragraph 2 is repealed,
(ii) in paragraph 15, sub-paragraphs (2) and (4) are repealed,
(iii) paragraph 17 is repealed,

(f) in Schedule 16 (repeals), in Part 1 (enactments relating to processes), the entry relating to 1990 c.43 (Environmental Protection Act 1990) is repealed.

Commencement Information
I111 Sch. 3 para. 23 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

PROSPECTIVE

Natural Heritage (Scotland) Act 1991

24 (1) Section 24 of the Natural Heritage (Scotland) Act 1991 (rights of entry and inspection under Parts 2 and 3) is amended as follows.

(2) In subsection (1)—
(a) in the opening words, the words "SEPA or" are repealed,
(b) in paragraph (a)—
(i) the words "SEPA or" are repealed,
(ii) the words "II or" are repealed,
(c) in paragraph (c)—
(i) for the words "either of these Parts" substitute " Part III ",
(ii) for the words "one of these Parts" substitute " that Part ".

(3) In subsection (9), the words "SEPA or", in both places where they occur, are repealed.

(4) In the title to section 24, for the words "Parts II and III" substitute " Part III ".

Agricultural Holdings (Scotland) Act 1991

25 In section 26 of the Agricultural Holdings (Scotland) Act 1991 (certificates of bad husbandry), subsection (2) is repealed.

Commencement Information
I112 Sch. 3 para. 25 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Clean Air Act 1993

26 In the Clean Air Act 1993, in section 42 (colliery spoilbanks)—
(a) in subsection (2), for the words "or quarry" substitute " , or the operator of a quarry, ",
(b) in subsection (6), for the words from "mine" to the end substitute—

""mine" is to be construed in accordance with section 180 of the Mines and Quarries Act 1954;

"operator", in relation to a quarry, has the meaning given by regulation 2(1) of the Quarries Regulations 1999 (S.I. 1999/2024);

"owner", in relation to a mine, is to be construed in accordance with section 181(1) and (4) of the Mines and Quarries Act 1954;

"quarry" is to be construed in accordance with regulation 3 of the Quarries Regulations 1999.".

Commencement Information
I113 Sch. 3 para. 26 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Radioactive Substances Act 1993

27 In the Radioactive Substances Act 1993, in Schedule 3 (enactments other than local enactments to which section 40 applies)—

(a) paragraph 11 is repealed,

(b) in paragraph 16—

(i) the words ", 30B, 30D, 41 to 42B" are repealed,

(ii) for "(3)" substitute " (2) ".

Commencement Information
I114 Sch. 3 para. 27 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Local Government etc. (Scotland) Act 1994

28 In the Local Government etc. (Scotland) Act 1994, in Schedule 13 (minor and consequential amendments), sub-paragraphs (3), (5) and (10) of paragraph 95 are repealed.

Commencement Information
I115 Sch. 3 para. 28 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Environment Act 1995

29 (1) The Environment Act 1995 is amended as follows.

(2) In section 21 (transfer of functions to SEPA)—

(a) in subsection (1)—

(i) paragraph (a)(i), (iii) and (iv) are repealed,

(ii) in paragraph (a)(ii), the words from "Part III" to "and" are repealed,

(iii) paragraphs (c), (d), (f) and (h) are repealed,

(b) in subsection (2), paragraph (b) is repealed.

(3) Section 23 (functions of the staff commission established under section 12 of the Local Government etc. (Scotland) Act 1994) is repealed.

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(4) In section 56 (interpretation of Part 1), in subsection (1), in the definition of "disposal authority", paragraph (b) is repealed.

(5) In section 91 (interpretation of Part 4), in subsection (1), in the definition of "action plan", for "84(2)(b)" substitute " 84(2) ".

(6) In section 110 (offences)—

(a) in subsection (1), after "to" insert " assault, hinder or ",

(b) in subsection (4)—

(i) in paragraph (a), after "of" where it second occurs insert " assaulting, hindering or ",

(ii) in sub-paragraph (i) of that paragraph, after "maximum" insert " or to imprisonment for a term not exceeding 12 months, or to both ",

(iii) in paragraph (b), for the words "level 5 on the standard scale" substitute " the prescribed sum within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 or to imprisonment for a term not exceeding 12 months, or to both ",

(c) after subsection (5) insert—

"(5A) A person may be convicted of the offence under subsection (1) above of hindering or obstructing even though it is—

(a) effected by means other than physical means, or

(b) effected by action directed only at any vehicle, apparatus, equipment or other thing used or to be used by an authorised person.

(5B) Subsection (5C) applies where, in the trial of a person ("the accused") charged in summary proceedings with an offence under subsection (1) above, the court—

(a) is not satisfied that the accused committed the offence, but

(b) is satisfied that the accused committed an offence under subsection (2) above.

(5C) The court may acquit the accused of the charge and, instead, find the accused guilty of an offence under subsection (2) above.".

(7) In section 114 (power of the Scottish Ministers to delegate functions relating to appeals), subsections (2)(a)(i) and (3)(b) are repealed.

(8) In Schedule 11 (air quality: supplemental provisions)—

(a) in paragraph 1(1)(b), the words "or 84" are repealed,

(b) in paragraph 4(2)(b), the words "or 84" are repealed.

(9) In schedule 20 (delegation of appellate functions of the Scottish Ministers), paragraph 4(3)(a) is repealed.

(10) In Schedule 22 (minor and consequential amendments)—

(a) paragraph 1 is repealed,

(b) in paragraph 29—

(i) in sub-paragraph (2), for the words from "section 30C(1)" to the end of that sub-paragraph, substitute " section 51 ",

(ii) sub-paragraphs (4)(b) to (e), (5), (6), (8), (9)(a) and (b), (10) to (15), (17) to (22), (25), (26), (29) and (30) are repealed,

(c) paragraph 93 is repealed,

(d) in paragraph 96, sub-paragraphs (2) to (5), (7) and (8) are repealed.

(11) In Schedule 23 (transitional and transitory provisions and savings), the following paragraphs are repealed—

(a) paragraph 4,

(b) paragraph 6,

(c) paragraph 8, and

(d) paragraph 18.

Commencement Information

I116 Sch. 3 para. 29 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

30 The amendments made by paragraph 29 to subsection (4) of section 110 of the Environment Act 1995 do not affect the penalty for an offence under that section committed before the coming into force of those amendments.

Commencement Information

I117 Sch. 3 para. 30 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Criminal Procedure (Scotland) Act 1995

31 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In section 277 (transcript of police interview sufficient evidence)—

(a) in subsection (1)—

(i) the word "or" immediately following paragraph (a) is repealed, and

(ii) after paragraph (b) insert "; or

(c) a person authorised by the Scottish Environment Protection Agency under section 108 of the Environment Protection Act 1995 and an accused person.",

(b) after subsection (4) add—

"(5) Subsection (1) is without prejudice to section 108(12) of the Environment Act 1995.".

(3) In section 280 (routine evidence)—

(a) after subsection (3), insert—

"(3A) For the purposes of any criminal proceedings, a report purporting to be signed by a person authorised by the Scottish Environment Protection Agency for the purpose of this subsection is sufficient evidence of any fact or conclusion as to fact contained in the report and of the authority of the signatory.",

(b) in subsection (6)—

(i) after "(1)", where it first occurs, insert " , (3A) ", and

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(ii) in paragraph (b), after "subsection", where it second occurs, insert " (3A) or ".

(4) In Schedule 9 (certificates as to proof of certain routine matters)—

(a) in the table, omit the entry relating to the Water Environment (Controlled Activities) (Scotland) Regulations 2005 Regulation 40,

(b) at the end of the table insert the following entries—

"The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209)		
Regulation 44	A person authorised to do so by the Scottish Environment Protection Agency	That the person has analysed a sample identified in the certificate (by label or otherwise) and that the sample is of a nature and composition specified in the certificate.
Regulations made by virtue of section 18 of the Regulatory Reform (Scotland) Act 2014 (asp 3)	A person authorised to do so by a regulator (within the meaning of paragraph 3(1) of schedule 2 to that Act)	That the person has analysed a sample identified in the certificate (by label or otherwise) and that the sample is of a nature and composition specified in the certificate. In relation to a person specified in the certificate that, on a date and in relation to an activity so specified, the person held or, as the case may be, did not hold a permit (within the meaning of paragraph 34 of schedule 2 to that Act) granted by such a regulator and, where the person held such a permit, any condition to which the permit is subject. In relation to a person specified in the certificate that, on a date and in relation to an activity so specified, the person held or, as the case may be, did not hold registration (within the meaning of

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paragraph 34 of schedule 2 to that Act) granted by such a regulator and, where the person held such registration—

(a) any condition to which the registration is subject;

(b) whether the registration subsisted on the date specified in the certificate.

In relation to a person specified in the certificate that, on a date and in relation to an activity so specified, the person had given notification (within the meaning of paragraph 34 of schedule 2 to that Act) to such a regulator and, where the person gave such notification, whether the notification subsisted on the date specified in the certificate.

In relation to a permit or registration (in each case within the meaning of paragraph 34 of schedule 2 to that Act) a description of any variation, transfer, surrender, suspension or revocation of the permit or registration.

In relation to a person specified in the certificate that, on a date so specified, such regulator served on the person a notice mentioned in paragraph 18 of schedule 2 to that Act.

That such a regulator has, in pursuance of paragraph 4(3)(d) of schedule 2 to that Act,

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made general binding rules as mentioned in that paragraph, or has, in pursuance of paragraph 11 of that schedule, made standard rules as mentioned in that paragraph; and the content of those general binding rules or standard rules.”.

Commencement Information
I118 Sch. 3 para. 31 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Town and Country Planning (Scotland) Act 1997

32 In the Town and Country Planning (Scotland) Act 1997, in section 275 (regulations and orders), the subsection numbered “(2A)” inserted by section 54(16)(a) of the Planning etc. (Scotland) Act 2006 is renumbered as “(2B)”.

Commencement Information
I119 Sch. 3 para. 32 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Planning (Consequential Provisions) (Scotland) Act 1997

33 In the Planning (Consequential Provisions) (Scotland) Act 1997, in Schedule 2 (consequential amendments), paragraph 23(1) is repealed.

Commencement Information
I120 Sch. 3 para. 33 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Crime and Punishment (Scotland) Act 1997

34 In the Crime and Punishment (Scotland) Act 1997, in section 30 (routine evidence) —

(a) in subsection (1), for the words “subsections (2) and (3)” substitute “ subsection (3) ”,
(b) subsection (2) is repealed.

Commencement Information
I121 Sch. 3 para. 34 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

City of Edinburgh (Guided Busways) Order Confirmation Act 1998

35 In the City of Edinburgh (Guided Busways) Order Confirmation Act 1998, in section 29 (connection of drains, etc, with streams, etc.) of the Order contained in the Schedule confirmed by section 1 of that Act, subsection (4) is repealed.

Commencement Information
I122 Sch. 3 para. 35 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Pollution Prevention and Control Act 1999

36 In the Pollution Prevention and Control Act 1999, in Schedule 3 (repeals), in the third column of the entry relating to the Environmental Protection Act 1990, the words "In section 79(10), the words "under Part I or"" are repealed.

Commencement Information
I123 Sch. 3 para. 36 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Antisocial Behaviour etc. (Scotland) Act 2004

37 In the Antisocial Behaviour etc. (Scotland) Act 2004, in schedule 2 (penalties for certain environmental offences), paragraph 2 is repealed.

Commencement Information
I124 Sch. 3 para. 37 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Forth Crossing Act 2011

38 In section 70 of the Forth Crossing Act 2011 (control of noise: Control of Pollution Act 1974), subsection (3) is repealed.

Commencement Information
I125 Sch. 3 para. 38 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

PART 6 S

MODIFICATIONS OF REFERENCES TO "ENACTMENT" ETC.

Control of Pollution Act 1974

39 (1) The Control of Pollution Act 1974 is amended as follows.

(2) In section 73 (interpretation and other supplementary provisions), after subsection (3) insert—

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"(3A) In the definition of "statutory undertakers" in subsection (1), "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

(3) In section 85 (appeals to Crown Court or Court of Session against decisions of magistrates' court or sheriff), after subsection (3) add—

"(4) In subsection (2), "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

(4) In section 105 (interpretation etc. – general), in subsection (2)(b), after "private" add " or by or under any Act of the Scottish Parliament ".

Commencement Information
I126 Sch. 3 para. 39 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Environmental Protection Act 1990

40 (1) The Environmental Protection Act 1990 is amended as follows.

(2) In section 33 (prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste), after subsection (10) add—

"(11) In subsection (4)(c) above, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

(3) In section 57 (powers of the Scottish Ministers to require waste to be accepted, treated, disposed of or delivered), after subsection (7) insert—

"(7A) In subsection (6) above, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

(4) In section 63 (waste other than controlled waste), after subsection (4) add—

"(5) In this section, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

(5) In section 73 (appeals and other provisions relating to legal proceedings and civil liability), after subsection (9) add—

"(10) In subsection (2) above, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

(6) In section 78X (supplementary provisions), after subsection (4) insert—

"(4A) In subsection (4)(f)(i) above, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

(7) In section 79 (statutory nuisances and inspections therefor), after subsection (6A) insert—

"(6B) In this section, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

(8) In section 98 (definitions for Part 6), after subsection (6), insert—

"(6A) In subsection (6) above, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

(9) In section 140 (power to prohibit or restrict the importation, use, supply or storage of injurious substances or articles), in subsection (11), before the definition of "the environment" insert—

""enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;".

(10) In Schedule 4 (abandoned shopping and luggage trolleys), after paragraph 1(2) add—

"(3) In sub-paragraph (2)(d) above, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

Commencement Information
I127 Sch. 3 para. 40 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Natural Heritage (Scotland) Act 1991

41 (1) The Natural Heritage (Scotland) Act 1991 is amended as follows.

(2) In section 7 (powers of entry), after subsection (11) add—

"(12) In subsection (1) above, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

(3) In Schedule 1 (constitution and proceedings of Scottish Natural Heritage), after paragraph 17(2) add—

"(3) In sub-paragraph (1) above, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

Commencement Information
I128 Sch. 3 para. 41 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Radioactive Substances Act 1993

42 (1) The Radioactive Substances Act 1993 is amended as follows.

(2) In section 40 (radioactivity to be disregarded for purposes of certain statutory provisions), in subsection (3)—

(a) in the definition of "statutory provision", in paragraph (a), after "Act" insert " or Act of the Scottish Parliament ",

(b) in the definition of "local enactment"—

(i) after paragraph (a) insert—

"(aa) an Act of the Scottish Parliament the Bill for which was a private Bill for the purposes of the standing orders of the Scottish Parliament,",

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(ii) in paragraph (b), after "by", where it second occurs, insert " the Scottish Parliament, ".

(3) In section 46 (effect of Act on other rights and duties), in paragraph (b)—

(a) the words from "any", where it second occurs, to the end of that paragraph become sub-paragraph (i) of that paragraph,

(b) after that sub-paragraph insert—

"(ii) any Act of the Scottish Parliament, or".

Commencement Information

I129 Sch. 3 para. 42 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Environment Act 1995

43 (1) The Environment Act 1995 is amended as follows.

(2) In section 27 (power of SEPA to obtain information about land), after subsection (3) add—

"(4) In subsection (1) above, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

(3) In section 30 (records held by SEPA), after subsection (3) add—

"(4) In subsection (3) above, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

(4) In section 37 (incidental general functions), after subsection (8) insert—

"(8A) In subsection (8) above, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

(5) In section 38 (delegation of functions by Ministers etc. to new Agencies), in subsection (10) after the definition of "eligible function" insert—

""enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;".

(6) In section 40 (ministerial directions to the new Agencies), after subsection (8) add—

"(9) In this section, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

(7) In section 43 (incidental power of the new Agencies to impose charges)—

(a) the existing text becomes subsection (1) of that section,

(b) after that subsection add—

"(2) In subsection (1) above, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

(8) In section 53 (inquiries and other hearings), after subsection (3) add—

"(4) In subsections (1) and (3) above, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

(9) In section 87 (regulations for the purposes of Part 4), after subsection (9) add—

"(10) In subsection (5)(c) above, "enactment" includes an enactment comprised in an Act of the Scottish Parliament.".

(10) In section 108 (powers of enforcing authorities and persons authorised by them), in subsection (15)—

(a) in the definition of "pollution control enactments" at the end add " (including any enactmentscomprised in, or in instruments made under, an Act of the Scottish Parliament relating to those functions). ",

(b) in the definition of "pollution control functions" in relation to the Scottish Ministers, after "instrument" insert " (includingany enactmentcomprised in, or in an instrument made under, an Act of the Scottish Parliament) ".

(11) In section 113 (disclosure of information), in subsection (5), after the definition of "new Agency" insert—

""enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

(12) In section 122 (directions), after subsection (5) insert—

"(6) In this section, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

(13) In Schedule 6 (the Scottish Environment Protection Agency), in paragraph 15, after sub-paragraph (2) add—

"(3) In sub-paragraph (1) above, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

(14) In Schedule 11 (air quality: supplemental provisions), in paragraph 5, after sub-paragraph (6) add—

"(7) In the definition of "fixed penalty offence" in sub-paragraph (6) above, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

Commencement Information

I130 Sch. 3 para. 43 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Flood Risk Management (Scotland) Act 2009

44 Section 78 of the Flood Risk Management (Scotland) Act 2009 (SEPA's power to obtain information about land) is repealed.

Status: *Point in time view as at 30/06/2014. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014. (See end of Document for details)*

Commencement Information

I131 Sch. 3 para. 44 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), **Sch.**

Status:
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Changes to legislation:
There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014.