



Regulatory Reform (Scotland) Act 2014

2014 asp 3

PART 3

ENVIRONMENTAL REGULATION

CHAPTER 4

MISCELLANEOUS

Vicarious liability

38 Vicarious liability for certain offences by employees and agents

- (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.

39 Liability where activity carried out by arrangement with another

- (1) Subsection (2) applies where, in the course of carrying on a regulated activity—
 - (a) a person (“A”) commits a relevant offence,

Status: This is the original version (as it was originally enacted).

- (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.