



# Regulatory Reform (Scotland) Act 2014

## 2014 asp 3

### PART 3

#### ENVIRONMENTAL REGULATION

#### CHAPTER 1

#### REGULATIONS FOR PROTECTING AND IMPROVING THE ENVIRONMENT

#### 16 General purpose: protecting and improving the environment

- (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.

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

- (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.

## **18 Regulations relating to protecting and improving the environment**

- (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.

## **19 Regulations relating to protecting and improving the environment: consultation**

- (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.

## CHAPTER 2

### SEPA'S POWERS OF ENFORCEMENT

#### *Fixed monetary penalties*

#### **20 Fixed monetary penalties**

- (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.

#### **21 Fixed monetary penalties: procedure**

- (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—
  - (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.

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- (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).

## **22 Fixed monetary penalties: effect on criminal proceedings etc.**

- (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.

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- (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.

#### *Variable monetary penalties*

### **23 Variable monetary penalties**

- (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).

## 24 Variable monetary penalties: procedure

- (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,

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- (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).

## **25 Variable monetary penalties: effect on criminal proceedings etc.**

- (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.

### *Non-compliance penalties*

## **26 Undertakings under section 24: non-compliance penalties**

- (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,

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- (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).

#### *Enforcement undertakings*

### **27 Enforcement undertakings**

- (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



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- (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.
- (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.

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### *Operation of penalties and cost recovery*

## **28      Combination of sanctions**

- (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).

## **29 Monetary penalties**

- (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.

## **30 Costs recovery**

- (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).

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- (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.

### *Guidance*

## **31 Guidance as to use of enforcement measures**

- (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

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- (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.

#### *Publication of enforcement action*

### **32 Publication of enforcement action**

- (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.

#### *Interpretation of Chapter 2*

### **33 Interpretation of Chapter 2**

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.

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## CHAPTER 3

### COURT POWERS

#### *Compensation orders*

#### **34 Compensation orders against persons convicted of relevant offences**

- (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.
- (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.

### *Fines*

#### **35 Fines for relevant offences: court to consider financial benefits**

- (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.

### *Publicity orders*

#### **36 Power to order conviction etc. for offence to be publicised**

- (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,

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- (b) on conviction on indictment, to a fine.

### **37 Corporate offending**

- (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.
- (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.

## **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.



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- (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,
  - (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.

#### *Offence relating to significant environmental harm*

### **40 Significant environmental harm: offence**

- (1) It is an offence for a person to—
- (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.<sup>40</sup>

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- (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

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- (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.

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

- (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
    - (iii) both.

#### **42 Corporate offending**

- (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.

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(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.

*Offences relating to supply of carrier bags: fixed penalty notices*

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

(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  
(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—
    - (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.

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*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.
- (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.

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- (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—

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- (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.”.

*Publicity and remediation orders: appeals by prosecutor*

**44 Orders under sections 36 and 41: prosecutor’s right of appeal**

- (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)”.

*Contaminated land and special sites*

**45 Contaminated land and special sites**

- (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—



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### **“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
  - (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

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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—

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- (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,”.

#### *Amendment of powers under section 108 of Environment Act 1995*

### **46 Amendment of powers under section 108 of Environment Act 1995**

- (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



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- 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 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;”

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(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;

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- (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—

“(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.

*Authorisations relating to waste management: offences by partnerships*

#### **47 Carriers of controlled waste: offences by partnerships affecting registration**

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;”,

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- (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”.

#### **48 Waste management licences: offences by partnerships**

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”.



*Air quality assessments*

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

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

- (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”.

*Smoke control areas: fuels and fireplaces*

**50 Smoke control areas: authorised fuels and exempt fireplaces**

- (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—

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- (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”.

## CHAPTER 5

### GENERAL PURPOSE OF SEPA

#### 51 General purpose of SEPA

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.”.

## CHAPTER 6

### REPORTING AND INTERPRETATION: PART 3

#### 52 Annual report on operation of Part 3

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.

#### 53 Meaning of “relevant offence” and “SEPA” in Part 3

In this Part—

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“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.