

SCHEDULE 3 MINOR AND CONSEQUENTIAL MODIFICATIONS

PART 2

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 - (ii) the words from “in” to the end of paragraph (b) are repealed,
 - (b) in subsection (4), paragraph (b) and the word “or” immediately preceding it are repealed,
 - (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—

Status: This is the original version (as it was originally enacted).

- “(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 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”,

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- (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 Authority appointed 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;

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- (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—
 - (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.”.

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.”.

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.