



# Regulatory Reform (Scotland) Act 2014

## 2014 asp 3

### PART 3

#### ENVIRONMENTAL REGULATION

#### 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—

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- (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.

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- (4) The court may make a publicity order—
  - (a) at its own instance, or
  - (b) on the motion of the prosecutor.
- (5) In deciding on the terms of a publicity order that it proposes to make, the court must have regard to any representations made by the prosecutor or by or on behalf of the person.
- (6) A publicity order—
  - (a) must specify a period within which the requirement to publicise the matters mentioned in paragraphs (a) to (c) of subsection (2) are to be complied with, and
  - (b) may require the convicted person to supply SEPA, within a specified period, with evidence that that requirement has been complied with.
- (7) In subsections (2) and (6), “specified”, in relation to a publicity order, means specified in the order.
- (8) A person who fails to comply with a publicity order commits an offence.
- (9) A person who commits an offence under subsection (8) is liable—
  - (a) on summary conviction, to a fine not exceeding £40,000,
  - (b) on conviction on indictment, to a fine.

### **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.