
STATUTORY INSTRUMENTS

2010 No. 699

The Environment Agency (Inland Waterways) Order 2010

PART 4

PROVISIONS AS TO OFFENCES

Offences

18.—(1) Any person who contravenes or attempts to contravene or knowingly allows a contravention of—

- (a) the requirements of article 4(1) (requirement for registration);
- (b) the terms of any exemption granted under article 4(3) (requirement for registration), article 11(3) (insurance), article 12(6) (construction and equipment standards) or article 15(6) (additional requirements for commercial vessels);
- (c) the requirements of article 11(1) (insurance);
- (d) the requirements of article 12(4) (construction and equipment standards);
- (e) the requirements of article 14(1) (inspection of vessels); or
- (f) the requirements of article 15(4) (additional requirements for commercial vessels),

is guilty of an offence.

(2) Any person who fails, without reasonable cause, proof of which lies on that person, to give or produce any information demanded under article 17 (power to require information, etc.), or in giving or producing it makes any statement which that person knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, is guilty of an offence.

(3) For the purposes of paragraph (2) a person is to be treated as making a false statement if that person produces, furnishes, signs or otherwise makes use of a document that contains a false statement.

(4) A person guilty of an offence under this article is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Proceedings for offences

19. Proceedings for an offence under this Order may be instituted only by or with the consent of the Agency.

Defence of due diligence

20.—(1) In proceedings for an offence under article 18(1)(d) it is a defence for the person charged to prove that that person charged took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) If in any case the defence provided under paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the person charged may

not, without leave of the court, be entitled to rely on that defence unless, within a period ending 7 clear days before the hearing, the person charged has served on the prosecutor a notice in writing giving such information as was then in that person's possession, identifying, or assisting in the identification of, that other person.

Offences by bodies corporate etc.

21.—(1) If an offence committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on the part of an officer,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with that member's functions of management as if the member were a director of the body.

(3) In paragraph (1) "officer", in relation to a body corporate, means—

- (a) a director, member of the committee of management, chief executive, manager or other similar officer of the body, or a person purporting to act in any such capacity; and
- (b) an individual who is a controller of the body.

(4) If an offence committed by a partnership is shown—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on the part of a partner,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In paragraph (4) "partner" includes a person purporting to act as a partner.

(6) If an offence committed by an unincorporated association is shown—

- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body; or
- (b) to be attributable to any neglect on the part of such an officer or member,

that officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) Regulations made under section 187(7) of the Licensing Act 2003⁽¹⁾ (regulations in respect of offences by foreign bodies) are to have effect with necessary modifications in relation to the provisions of this article.

(8) In this article "offence" means an offence under this Order.

Jurisdiction and procedure in respect of offences

22.—(1) A fine imposed on a partnership or an unincorporated association on its conviction for an offence is to be paid out of the funds of the partnership or association.

(2) Proceedings for an offence alleged to have been committed by a partnership or an unincorporated association must be brought in the name of the partnership or association (and not in that of any of its members).

(3) Rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate.

(1) 2003 c. 17.

(4) In proceedings for an offence brought against a partnership or an unincorporated association, section 33 of the Criminal Justice Act 1925⁽²⁾ and Schedule 3 to the Magistrates' Courts Act 1980⁽³⁾ (procedure) apply as they do in relation to a body corporate.

(5) Proceedings for an offence may be taken—

(a) against a body corporate, partnership or unincorporated association at any place at which it has a place of business; and

(b) against an individual at any place where that person is for the time being.

(6) Paragraph (5) does not affect any jurisdiction exercisable apart from this article.

(7) In this article “offence” means an offence under this Order.

⁽²⁾ 1925 c. 86.

⁽³⁾ 1980 c. 43.