



Regulatory Reform (Scotland) Act 2014

2014 asp 3

PART 3

ENVIRONMENTAL REGULATION

CHAPTER 4

MISCELLANEOUS

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 - (i) the word “or” immediately following paragraph (b) is repealed,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 offence mentioned in sub-paragraph (i) or (ii) above;

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- (iv) an attempt, conspiracy or incitement to commit an offence mentioned in subparagraph (i) or (ii) above; or
- (e) in a case only where the person is authorised by SEPA, of determining whether, and if so to what extent, any financial benefit has accrued or is likely to accrue to a person in connection with an offence mentioned in subsection (1A) below which the authorised person reasonably believes is being or has been committed.”
- (b) after subsection (1) insert—
 - “(1A) The offence is a relevant offence (within the meaning of section 53 of the Regulatory Reform (Scotland) Act 2014) for the purpose of provision made under section 24, or of section 35, of that Act).”
- (c) in subsection (4)—
 - (i) in paragraph (h), after sub-paragraph (iii) insert—
 - “(iv) to ensure that it is available for use as evidence in any proceedings for an offence under section 40(1) of the Regulatory Reform (Scotland) Act 2014;”
 - (ii) in paragraph (j), the words from “to answer” to the end become subparagraph (i) of that paragraph, and after that subparagraph insert “; and
 - (ii) without prejudice to the generality of paragraph (c) above, to attend at such place and at such reasonable time as the authorised person may specify to answer those questions and sign such a declaration;”
 - (iii) after paragraph (j) insert—
 - “(ja) in a case only where he is authorised under subsection (1) or (2) above by SEPA, and without prejudice to the generality of paragraphs (c) and (j) above, to require any person whom he has reasonable cause to believe to be able to give any information relevant to an examination or investigation under paragraph (c) above, to provide the person’s name, address and date of birth;”
 - (iv) after paragraph (k) insert—
 - “(ka) as regards any premises which by virtue of an authorisation from SEPA he has power to enter, to search the premises and seize and remove any documents found in or on the premises which he has reasonable cause to believe—
 - (i) may be required as evidence for the purpose of proceedings relating to an offence under any of the pollution control enactments, or under section 40(1) of the Regulatory Reform (Scotland) Act 2014, which he

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- 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.