
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 543

The EC Fertilisers (Scotland) Regulations 2006

PART V

Penalties and defence of due diligence

Penalties and defence of due diligence

20.—(1) A person convicted of an offence under these Regulations shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or both; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

(2) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar person of the body corporate; or
- (b) any person who was purporting to act in the capacity of director, manager, secretary or other similar person of the body corporate,

that person, as well as the body corporate, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(3) Where an offence under these Regulations is committed by a partnership and is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, a partner, that partner as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(4) Subject to paragraphs (5) and (6), in any proceedings for an offence under any provision of these Regulations, it shall be a defence for the person charged to prove that all reasonable precautions were taken and all due diligence exercised to avoid commission of the offence by that person or by another person under that person's control.

(5) If in any case the defence provided by paragraph (4) involves the allegation that the commission of the offence was due to—

- (a) an act or default of another person; or
- (b) reliance on information supplied by another person,

the person charged shall not, without leave of the court, be entitled to rely on that defence unless, not less than seven clear days before the trial diet, the person charged has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in the possession of the person charged.

(6) A person shall not be entitled to the defence in paragraph (4) by reason of reliance on information supplied by another person unless that person shows that it was reasonable in all the circumstances to have relied on the information having regard to—

- (a) the steps that the person charged took, or which might reasonably have been taken, to verify the information; and
 - (b) whether there was any reason to disbelieve the information.
- (7) In paragraph (2), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.