

2013 No. 127

FREEDOM OF INFORMATION

**The Environmental Information (Scotland) Amendment
Regulations 2013**

<i>Made</i>	- - - -	<i>18th April 2013</i>
<i>Laid before the Scottish Parliament</i>		<i>22nd April 2013</i>
<i>Coming into force</i>	- -	<i>31st May 2013</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Environmental Information (Scotland) Amendment Regulations 2013 and come into force on 31st May 2013.

(2) These Regulations extend to Scotland only.

Amendment of the Environmental Information (Scotland) Regulations 2004

2.—(1) The Environmental Information (Scotland) Regulations 2004(b) are amended as follows.

(2) After regulation 19 (offences) insert—

“Time limit for proceedings

19A.—(1) Proceedings for an offence under regulation 19(1) committed on or after 31st May 2013 may be commenced within the period of 6 months beginning with the date on which evidence that the prosecutor believes is sufficient to justify the proceedings came to the prosecutor’s knowledge.

(2) No proceedings for an offence referred to in paragraph (1) may be commenced more than 3 years—

- (a) after the commission of the offence; or
- (b) in the case of a continuous contravention, after the last date on which the offence was committed.

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. The functions conferred upon the Minister of the Crown by section 2(2) of the European Communities Act 1972, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) S.S.I. 2004/520.

(3) In the case of a continuous contravention, the complaint may specify the entire period during which the offence was committed.

(4) A certificate signed by or on behalf of the prosecutor stating the date on which the evidence referred to in paragraph (1) came to the prosecutor's knowledge is conclusive as to that fact (and such a certificate purporting to be so signed is to be regarded as being signed unless the contrary is proved).

(5) Section 136(3) Criminal Procedure (Scotland) Act 1995 applies for the purposes of this regulation as it does for those of that section.”.

St Andrew's House,
Edinburgh
18th April 2013

NICOLA STURGEON
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 19 of the Environmental Information (Scotland) Regulations 2004 (“2004 Regulations”) provides that a person who, with the intention of preventing disclosure of information subject to a request, alters, defaces, blocks, erases, destroys or conceals the information is guilty of an offence. An offence under regulation 19 is a summary only offence with a fine not exceeding, at current levels, £5,000. As a summary only offence, any prosecution must be brought within six months of the commission of the offence, in accordance with section 136 of the Criminal Procedure (Scotland) Act 1995.

These Regulations amend the 2004 Regulations by specifying that in relation to offences committed on or after 31st May 2013 the time period within which a prosecution must be brought is six months from the date on which evidence, sufficient in the opinion of the prosecutor to justify proceedings, comes to the prosecutor’s knowledge. Furthermore, no proceedings can be commenced more than three years after the commission of the offence.

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