
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 410

The Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021

PART 3

Offences by bodies corporate, defence of due diligence and enforcement

Offences by bodies corporate

12.—(1) Where—

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association, and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual, or
 - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” means—

- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body,
 - (ii) where the affairs of the body are managed by its members, a member,
- (b) in relation to a Scottish partnership, a partner,
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Defence of due diligence

13.—(1) Where a person is charged with an offence under these Regulations, it is a defence for that person to show that the person took all reasonable precautions and exercised all due diligence to prevent the offence being committed.

(2) Where the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to the act or omission of another person, the person charged must not, without leave of the court, be entitled to rely on the defence unless, within the period of 7 days before the hearing, the person charged has served on the prosecutor a notice giving such information identifying or assisting in the identification of the other person as was then in the possession of the person charged.

Enforcement

14.—(1) A local authority may authorise any person to exercise in its area, for an authorised purpose and in accordance with the terms of the authorisation, any of the powers specified in regulation 15, if that person appears suitable to exercise them.

(2) An authorisation under paragraph (1) must be in writing.

Powers of entry and examination etc.

15.—(1) The powers which an enforcement officer may be authorised to exercise are—

- (a) to enter at any reasonable time any premises (other than premises used wholly or mainly as a dwelling) which the enforcement officer has reason to believe it is necessary to enter for an authorised purpose,
- (b) when entering any premises under sub-paragraph (a)—
 - (i) to be accompanied by another enforcement officer, and
 - (ii) to bring any equipment or materials required for any authorised purpose for which the power of entry is being exercised,
- (c) on entering any premises under sub-paragraph (a)—
 - (i) to make such examination and investigation as may in any circumstances be necessary,
 - (ii) to take such measurements and photographs and make such recordings as the enforcement officer considers necessary for the purpose of any such examination or investigation, and
 - (iii) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any documents which it is necessary for the enforcement officer to see for the purposes of any such examination or investigation and to inspect and take copies of the document,
- (d) as regards any premises which an enforcement officer has power to enter under sub-paragraph (a), to direct that those premises or any part of them, or anything in them, be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of examination or investigation under sub-paragraph (c),
- (e) to take any samples, or cause samples to be taken, of any articles or substances found in or on any premises which an enforcement officer has power to enter under sub-paragraph (a), and to cause any such articles or substances to be analysed or tested,
- (f) in the case of any such sample, to take possession of it and to retain it for so long as is necessary for all or any of the following purposes—
 - (i) to examine it, and subject it to any process or test, or cause it to be examined,
 - (ii) to ensure that it is not tampered with before the examination is completed,
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations.

(2) Except in an emergency, where an enforcement officer proposes to enter any premises and—

- (a) entry has been refused and the enforcement officer apprehends on reasonable grounds that the use of force may be necessary to effect entry, or
- (b) the enforcement officer apprehends on reasonable grounds that entry is likely to be refused and that the use of reasonable force may be necessary to effect entry,

any entry on to those premises by virtue of paragraph (1)(a) may only be effected under the authority of a warrant by virtue of paragraph (3).

(3) If it is shown to the satisfaction of a sheriff, summary sheriff or justice of the peace on sworn information in writing—

- (a) that there is reasonable ground for entry into the premises for the purpose for which entry is required, and
- (b) that one or more of the conditions specified in paragraph (4) below is fulfilled,

the sheriff, summary sheriff or justice of the peace may by warrant authorise the enforcement officer to enter the premises, in accordance with the warrant and, if need be, by force.

(4) The conditions mentioned in paragraph (3)(b) above are—

- (a) that admission to any premises has been refused,
- (b) that such a refusal is reasonably apprehended,
- (c) that the premises are unoccupied,
- (d) that the occupier is temporarily absent from the premises and the case is one of urgency, or
- (e) that an application for admission to the premises would defeat the object of the proposed entry.

(5) A warrant issued in pursuance of paragraph (3) above continues in force until the purpose for which the entry is required has been satisfied.

(6) Nothing in paragraph (1)(c)(iii) compels the production by a person of any document of which that person would on grounds of legal professional privilege be entitled to withhold production on an order for the production of documents in an action in the Court of Session.

(7) An enforcement officer may only exercise the powers in paragraph (1) if the enforcement officer has reasonable cause to believe that an offence under regulations 3(1), (2) or (3), 4(1) or 5(1) has been committed.

(8) An enforcement officer seeking to exercise a power under paragraph (1) must produce evidence of identity and authority if requested by a person who is, or appears to be—

- (a) a supplier, or employee of such a supplier, of—
 - (i) any products referred to in regulation 3(4),
 - (ii) single-use plastic straws, or
 - (iii) single-use plastic balloon sticks,
- (b) a manufacturer, or employee of such a manufacturer, of any products referred to in regulation 3(4), or
- (c) the owner or occupier of any premises in which the enforcement officer seeks to exercise the power concerned.

(9) In this regulation—

“document” includes any thing in which information of any description is recorded (by any means) and any part of such a thing, and

“emergency” means a case which it appears to the enforcement officer in question—

- (i) that there is an immediate risk of serious pollution of the environment or serious harm to human health, or
- (ii) that the circumstances exist which are likely to endanger life or health,

and that immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or to effect a remedy.