



Control of Pollution Act 1974

1974 CHAPTER 40

PART V

SUPPLEMENTARY PROVISIONS

Legal proceedings

85 Appeals to Crown Court or Court of Session against decisions of magistrates' court or sheriff.

- (1) An appeal against any decision of a magistrates' court in pursuance of this Act (other than a decision made in criminal proceedings) shall lie to the Crown Court at the instance of any party to the proceedings in which the decision was given if such an appeal does not lie to the Crown Court by virtue of any other enactment.
- (2) In Scotland an appeal against any decision of the sheriff in pursuance of this Act (other than a decision made in criminal proceedings) shall lie to the Court of Session at the instance of any party to the proceedings in which the decision was given if such an appeal does not lie to the Court of Session by virtue of any other enactment.
- (3) Where a person appeals to the Crown Court or the Court of Session against a decision of a magistrates' court or the sheriff dismissing an appeal against a notice served in pursuance of this Act which was suspended pending determination of that appeal, the notice shall again be suspended pending the determination of the appeal to the Crown Court or Court of Session.
- [^{F1}(4) In subsection (2), "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

Textual Amendments

- F1** S. 85(4) added (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), **Sch. 3 para. 39(3)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

Changes to legislation: There are currently no known outstanding effects for the Control of Pollution Act 1974, Cross Heading: Legal proceedings. (See end of Document for details)

86 F2

Textual Amendments

F2 S. 86 repealed by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. 1**

87 Miscellaneous provisions relating to legal proceedings.

- (1) When an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

Where the affairs of a body corporate are managed by its members the preceding provisions of this subsection shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

- (2) Where the commission by any person of an offence under this Act is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of an offence by virtue of this subsection whether or not proceedings for the offence are taken against any other person.
- [^{F3}(3) ^{F4}... Notwithstanding anything in [^{F5}section 331 of the Criminal Procedure (Scotland) Act 1975], summary proceedings in Scotland for any [^{F5}offence under section 30F of this Act or regulations or byelaws made in pursuance of section 31 of this Act] such offence may be commenced at any time within one year from the time when the offence was committed, and [^{F5}subsection (3) of section 331 of the said Act of 1975] shall apply for the purposes of this subsection, ^{F4}... as that subsection applies for the purposes of that section.]
- (4) Where an appeal against a decision of a relevant authority lies to a magistrates' court by virtue of any provision of this Act, it shall be the duty of the authority to include in any document by which it notifies the decision to the person concerned a statement indicating that such an appeal lies as aforesaid and specifying the time within which it must be brought.
- (5) Where on an appeal to any court against or arising out of a decision of a relevant authority in pursuance of this Act the court varies or reverses the decision it shall be the duty of the authority to act in accordance with the court's decision.
- (6) A judge of any court and a justice of the peace shall not be disqualified from acting in cases arising under this Act by reason of his being, as one of several ratepayers or as one of any other class of persons, liable in common with the others to contribute to or be benefited by any rate or fund out of which any expenses of a relevant authority are to be defrayed.

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Textual Amendments

- F3** S. 87(3) repealed (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [Sch. 3 para. 16\(2\)\(q\)](#); S.S.I. 2014/160, art. 2(1)(2), Sch.
- F4** Words in s. 87(3) repealed (1.4.1996) by 1995 c. 25, ss. 106, 120(3), [Sch. 16 para. 9\(a\)\(e\)](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#)
- F5** Words in s. 87(3) substituted (S.) (1.4.1996) by 1995 c. 25, s. 106, [Sch. 16 para. 9\(b\)\(c\)\(d\)](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#)

^{F6}88 Civil liability for contravention of s. 3(3).

- (1) Where any damage is caused by poisonous, noxious or polluting waste which has been deposited on land, any person who deposited it or caused or knowingly permitted it to be deposited, in either case so as to commit an offence under section 3(3) or by virtue of section 18(2) of this Act, is liable for the damage except where the damage—
- was due wholly to the fault of the person who suffered it; or
 - was suffered by a person who voluntarily accepted the risk thereof.
- (2) The matters which under paragraphs (a) to (c) of subsection (4) of section 3 of this Act may be proved by way of defence to a charge of committing an offence under subsection (3) of that section may be proved also by way of defence to an action brought by virtue of the preceding subsection (the reference in the said paragraph (a) to the charge being construed as a reference to the act alleged to give rise to the liability).
- (3) In this section—
- “damage” includes the death of, or injury to, any person (including any disease and any impairment of physical or mental condition);
- “fault” has the same meaning as in the ^{M1}Law Reform (Contributory Negligence) Act 1945; and
- “land” includes such water as is mentioned in section 4(4) of this Act.
- (4) For the purposes of the following enactments, namely—
- the Fatal Accidents Acts 1846 to 1959;
 - the ^{M2}Law Reform (Contributory Negligence) Act 1945; and
 - ^{F7}(c) the ^{M3}Limitation Act 1980]
- and for the purposes of any action of damages in Scotland arising out of the death of, or personal injury to, any person, any damage for which a person is liable under subsection (1) of this section shall be treated as due to his fault.
- (5) Subsection (1) of this section is without prejudice to any liability which arises apart from the provisions of this section.

Textual Amendments

- F6** S. 88 repealed (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [Sch. 3 para. 16\(2\)\(r\)](#); S.S.I. 2014/160, art. 2(1)(2), Sch.
- F7** S. 88(4)(c) substituted by [Limitation Act 1980 \(c. 58\)](#), [Sch. 3 para. 12](#)

Modifications etc. (not altering text)

- C1** S. 88(4)(a) extended by [Fatal Accidents Act 1976 \(c. 30\)](#), [Sch. 1 para. 2](#)

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Marginal Citations

M1 1945 c. 28.

M2 1945 c. 28.

M3 1980 c. 58.

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