

The International Comparative Legal Guide to:

Environment Law 2009

A practical insight to cross-border Environment Law



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 Žurić i Partneri

Scotland

Jennifer Ballantyne



Jennifer McCracken



McGrigors LLP

1 Environmental Policy and its Enforcement

1.1 What is the basis of environmental policy in Scotland and which agencies/bodies administer and enforce environmental law?

Environmental policy is a devolved matter for which the Scottish rather than the UK Parliament is responsible. As such, there are differences between environmental policy in Scotland and that in England and Wales. However, the majority of environmental policy in Scotland stems from EU directives which Scotland - as part of the UK - must transpose into its domestic law.

The Scottish Government has a range of powers in relation to environmental law. They are responsible for legislation and guidance, the development of environmental policy in Scotland, and have control over the environmental agencies in Scotland.

The Scottish Environment Protection Agency (SEPA) is the central body responsible for the administration and enforcement of environmental law in Scotland. However, Local Authorities also play a key role within their jurisdictions. Local Authorities are primarily responsible in relation to the UK statutory contaminated land regime and environmental health.

Should any enforcement matter require prosecution, it will require to be referred to the Crown Office and Procurator Fiscal Service (COPFS) who will then determine whether or not to bring a prosecution.

1.2 What approach do such agencies/bodies take to the enforcement of environmental law?

A guide to the general approach of the authorities in Scotland can be seen in SEPA's most recently published enforcement policy (number 5). SEPA will initially seek voluntary compliance with environmental law through non-statutory warning letters, holding discussions etc. It is generally only where these methods have failed or repeated or a serious breach has occurred that SEPA will opt to use its statutory enforcement powers.

Once a matter has been referred to the Crown Office, it is not guaranteed that a prosecution will follow. Where a case does reach the courts, fines have tended to be low in comparison with other jurisdictions. However, there are the beginnings of a change in the attitude of the courts to environmental offences.

1.3 To what extent are public authorities required to provide environment-related information to interested persons (including members of the public)?

The Environment Act 1995 contains a power of mutual disclosure of information between the Scottish Ministers, SEPA and Local Authorities to enable them to carry out their environmental functions. In addition, certain pieces of environmental legislation establish public registers which must contain certain information.

More generally, public authorities are under duties of disclosure to interested persons through the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004. The information should be made available within 20 working days of request, or exceptionally within 40 working days if the request is complex and voluminous. Public bodies can refuse only in accordance with certain limited exceptions.

2 Environmental Permits

2.1 When is an environmental permit required, and may environmental permits be transferred from one person to another?

There are a number of different permit regimes including:

- Pollution Prevention and Control (Scotland) Regulations 2000;
- Waste Management Licensing Regulations 1994;
- Water Environment (Controlled Activities) (Scotland) Regulations 2005;
- Planning (Hazardous Substances) (Scotland) Act 1997; and
- Greenhouse Gas Emissions Trading Scheme Regulations 2005.

In terms of the transferring of permits, there has been a shift in emphasis from permits being point specific to person specific. PPC permits are transferable, provided that the proposed transferee can fulfil the conditions of the original permit. In relation to a waste management licence or a PPC permit for a waste management activity, SEPA must also be satisfied that the assignee is a "fit and proper" person to carry out the activity.

2.2 What rights are there to appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of the conditions contained in an environmental permit?

An applicant for a permit will always have a right of appeal and the majority of appeals against decisions of Scottish environmental

regulators are directly to the Scottish Ministers.

The statutory regimes applicable to each permit lay down the specific appeal procedure, including grounds of appeal and time limits. Further appeals are often available. However these are to the Scottish Courts and are purely on points of law.

2.3 Is it necessary to conduct environmental audits or environmental impact assessments for particularly polluting industries or other installations/projects?

There is compulsory environmental auditing as part of the PPC regime or where there is an application to surrender a waste licence. There are also various specific requirements for an audit, for example in relation to asbestos risks for employees. In terms of corporate mergers and acquisitions, environmental audits are voluntary and form part of the due diligence exercise.

The Environmental Impact Assessment (Scotland) Regulations 1999 require an EIA to be carried out for certain projects (described as "Schedule 1 developments"). These include oil refineries, nuclear power stations and integrated chemical installations. Development of a type listed in Schedule 2 to the Regulations which: (a) meets one of the relevant criteria or exceeds one of the relevant thresholds (relating to size and scale of the project); or (b) is located wholly or in part in a "sensitive area" will also require an EIA.

2.4 What enforcement powers do environmental regulators have in connection with the violation of permits?

Each statutory regime provides powers to the relevant regulating authority to deal with violations of permits. These range from closing down a guilty party's operations to issuing warning letters. In addition it is open to the regulators to refer matters for criminal prosecution against individuals, companies or corporate officers.

Civil enforcement is also possible, taking the form of actions to prevent or remedy pollution.

3 Waste

3.1 How is waste defined and do certain categories of waste involve additional duties or controls?

The definition of "waste" which applies in Scotland is the same as that throughout the EU. "Waste" is any material, substance or product that is discarded, or that the holder intends or is required to discard. There are some exceptions to this definition. As a result of successive cases on the meaning of this definition in the European Court of Justice (ECJ), the definition is in reality much more complex.

In response to the complexity of this definition, the Waste & Resource Action Programme (WRAP) are designing a number of Protocols to provide guidance to producers of waste throughout the UK including in Scotland.

Some categories of waste will involve extra duties being placed on the producer, such as "special waste" (which corresponds with the EU definition of "hazardous waste" under the EU Hazardous Waste Directive (91/689/EEC), packaging waste, waste electronic and electrical equipment and end of life vehicles.

There are also specific rules in relation to the different means of disposal of different types of waste (such as landfill, incineration etc.).

3.2 To what extent is a producer of waste allowed to store and/or dispose of it on the site where it was produced?

Storage and disposal of waste is permissible where the producer has a Waste Management Licence, permission under a PPC permit, or where it falls within the definition of an exempt activity as set out in the Waste Management Licensing Regulations 1994. For example, it is permissible to store waste for up to 12 months on site pending collection or disposal.

Specific legislation requires producers to have management plans for the storage of asbestos, hazardous substances and chemicals etc.

3.3 Do producers of waste retain any residual liability in respect of the waste where they have transferred it to another person for disposal/treatment off-site (e.g. if the transferee/ultimate disposer goes bankrupt/disappears)?

The Environmental Protection Act 1990 imposes a statutory duty of care in respect of waste in Scotland. The duty applies to any party who "imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of such waste". The duty imposed is to take all such measures "reasonable in the circumstances" to prevent any contravention by any other person of relevant waste laws; to prevent the escape of the waste from their control or that of any other person; and on the transfer of the waste, to secure (a) that the transfer is only to an authorised person or to a person for authorised transport purposes and (b) that there is transferred such a description of the waste as will enable other persons to avoid contravention of relevant waste laws. Thus a chain of responsibility is created among all those who handle waste and a producer will retain certain responsibilities for his waste even after it has been transferred to another.

3.4 To what extent do waste producers have obligations regarding the take-back and recovery of their waste?

Certain waste producers have obligations in this respect under:

- The Waste Electrical and Electronic Equipment Regulations 2006 which transposed the Waste Electrical and Electronic Equipment (WEEE) Directive (2002/96/EC) into UK law. This sets out a number of requirements in relation to this waste stream, such as a customer's rights to free take-back of old domestic WEEE when purchasing equivalent new domestic EEE;
- The End-of-Life Vehicles (ELV) (Producer Responsibility) Regulations 2005 which transposed the ELV Directive (2000/53/EC) into UK law. This sets out obligations in relation to collection systems to take back ELVs, as well as re-use and recycling targets etc; and
- The Producer Responsibility Obligations (Packaging Waste) Regulations 2005. These Regulations require businesses to recover and recycle given percentages of this waste.

4 Liabilities

4.1 What types of liabilities can arise where there is a breach of environmental laws and/or permits, and what defences are typically available?

Civil and criminal liability can both arise as a result of a breach of environmental law or the conditions of a permit.

Civil liability can arise where a third party raises an action under common law on the basis of negligence or nuisance. In addition, there is provision in public law for civil liability to regulatory

authorities for certain activities such as removing unlawfully deposited waste, remediating contaminated land and water pollution.

Criminal liability can arise under various statutes. This can be as a result of failure to hold a permit when carrying out certain regulated activities or failure to comply with an enforcement notice served by an enforcing authority. It is also a criminal offence to obstruct a regulator attempting to use its statutory powers of entry and investigation in certain circumstances. The Environmental Damage (Prevention and Remediation) (Scotland) Regulations 2009 (“the EDR”) will transpose the Environmental Liability Directive (2004/35/EC) (“ELD”) in Scotland and will, when they come into force later this year, introduce further offences in Scotland for (amongst others) (i) failing to take immediate action to prevent “environmental damage” or (ii) failing to notify the enforcing authority where there is an imminent threat of “environmental damage”.

Possible defences to environmental liability include those of Best Practicable Means (BPM) and Best Available Techniques (BAT). The specific requirements to prove that the “best practicable means” have been taken to reduce/prevent pollution vary depending on the type of pollution. Cost is not necessarily the decisive factor. BAT relates to the best technologies available to prevent, reduce or render harmless any substances that might cause harm if released into the environment.

4.2 Can an operator be liable for environmental damage notwithstanding that the polluting activity is operated within permit limits?

Yes. If a party is operating within the limits of its permit, this will not necessarily protect it from all forms of environmental liability. A party might still be liable under a statutory regime other than the one under which the permit was issued and is also vulnerable to a common law action.

Although complying with a permit cannot prevent an action at common law (e.g. of nuisance), it can be used as a defence.

Furthermore, the EDR contain provisions allowing an appeal against a determination of “environmental damage” by the enforcing authority and therefore a liability to remediate on the grounds that the operator was not at fault or negligent and the omission or event was authorised and in accordance with a permit.

4.3 Can directors and officers of corporations attract personal liabilities for environmental wrongdoing, and to what extent may they get insurance or rely on other indemnity protection in respect of such liabilities?

Section 157 of the Environmental Protection Act 1990 and section 30(4) of the Pollution Prevention Control (Scotland) Regulations 2000 state that where an environmental offence has been committed “with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity”, that person as well as the body corporate, shall be guilty of that offence.

It is possible for companies to obtain insurance to protect its officers from personal liability, subject to the provision of section 310 of the Companies Act. However, this insurance may not cover every eventuality and would provide no protection against a custodial sentence.

4.4 What are the different implications from an environmental liability perspective of a share sale on the one hand and an asset purchase on the other?

In relation to a share purchase, if the target company is an “operator” or a licence holder or an “appropriate person”, it will remain so after the sale is completed and thus - subject to any warranties or indemnity protection obtained from the sellers - the purchasers will take on that company’s liabilities past, present and future. However, if the sellers could be said, through past control over the target company, to have caused or knowingly permitted pollution, residual risk may remain.

In relation to an asset purchase, the purchaser will not automatically take on liability for previous environmental failures. In this case it would depend on the specific contract of sale (e.g. was the property “sold with information” about any environmental issues?) and the type of pollution involved.

4.5 To what extent may lenders be liable for environmental wrongdoing and/or remediation costs?

The general rule is that the mere lending of money to a business to purchase land or to enable activities to be carried out (which in turn cause pollution) cannot in itself cause the lender to be liable for environmental wrongdoing. However, this may change if the lender exercises substantial levels of control over the borrower and its operations (e.g. acting as a “shadow director”) or if the lender should seek to enforce its security, in which case the lender may become liable for environmental wrongdoing, again as a result of taking control of the relevant land or activity.

5 Contaminated Land

5.1 What is the approach to liability for contamination (including historic contamination) of soil or groundwater?

Part IIA of the Environmental Protection Act 1990 as amended (“Part IIA”) provides the legislative framework for the identification and remediation of contaminated land throughout the UK and proceeds on the fundamental principle of “the polluter pays”.

Although Part IIA deals with both soil and water pollution including groundwater, there is also a separate regime under the Water Environment (Controlled Activities) (Scotland) Regulations 2005, which regulates activities associated with the water environment, including groundwater. This regime also targets “the responsible person” i.e. the person carrying on the relevant controlled activity.

The EDR will also have an impact on contaminated land because they apply to “environmental damage”, one element of which is contamination of land that results in a significant risk of adverse effects on human health. This is a lower standard to that contained within Part IIA.

5.2 How is liability allocated where more than one person is responsible for the contamination?

Where more than one person is responsible for the contamination of land, the provisions are extremely complex. The rules set out two “classes” of person: Class A and Class B.

A Class A person is someone who has caused or knowingly permitted a pollutant to be in, on or under the land. If there is more than one Class A person responsible for contamination there are six tests which must be applied by the regulator to decide whether any person can be excluded from this category.

After these exclusion tests have been applied, the regulator must then apportion liability between those people remaining in the Class A group. This apportionment should reflect each person's role in causing or permitting the pollution which failing (e.g. due to a lack of information) liability will be apportioned equally.

A Class B person is an owner or occupier of contaminated land, and will be liable where no Class A person can be found (after reasonable enquiry) in relation to a particular remediation action. If there is more than one Class B person (even after the application of the only exclusion test for this group which would exclude those without an interest in the capital value of the land), liability will be apportioned in respect of the ownership of specific areas of the land or on the basis of each person's capital interest in the land.

5.3 If a programme of environmental remediation is 'agreed' with an environmental regulator can the regulator come back and require additional works or can a third party challenge the agreement?

If a remediation programme has been agreed it should not be capable of alteration unless new contamination comes to light or there are gaps or uncertainties in what has been agreed. Third party challenge would be by way of judicial review. For judicial review to be successful the third party would have to demonstrate sufficient interest in the agreement and/or the land in question, as well as proving one of three very restricted grounds: illegality; irrationality; or procedural impropriety

5.4 Does a person have a private right of action to seek contribution from a previous owner or occupier of contaminated land when that owner caused, in whole or in part, contamination; and to what extent is it possible for a polluter to transfer the risk of contaminated land liability to a purchaser?

Although it would generally be difficult for someone to seek contribution from the previous owner (the general principle of land transfer being "buyer beware"), where there has been a misrepresentation as to the state of the land, the current owner could raise an action against the previous owner on that basis. Alternatively parties may agree that liability should be split between the previous and new owner in terms of the sale contract. There is specific provision under Part IIA for such contracts also to be recognised and given effect to by the enforcing authorities provided certain statutory criteria are also met.

5.5 Does the government have authority to obtain from a polluter, monetary damages for aesthetic harms to public assets, e.g., rivers?

No matter who owns an asset, Scottish environmental legislation or common law will often provide a remedy against those who pollute and cause damage to assets. The "damages" sought can include criminal fines or the cost of remediation works to be carried out at the polluter's expense.

6 Powers of Regulators

6.1 What powers do environmental regulators have to require production of documents, take samples, conduct site inspections, interview employees, etc.?

Any environmental authority may exercise a wide range of investigative powers under the Environment Act 1995 section 108.

These include entry to and the carrying out of investigations upon premises.

7 Reporting / Disclosure Obligations

7.1 If pollution is found on a site, or discovered to be migrating off-site, must it be disclosed to an environmental regulator or potentially affected third parties?

Currently, the main disclosure duty in relation to pollution would arise under an existing environmental permit. However, the EDR will impose a new proactive requirement for businesses and industry to notify the regulator of both imminent and actual "environmental damage" which is defined in the EDR as (i) adverse effects on the integrity of a Site of Special Scientific Interest (SSSI) or on the conservation status of EU protected species and habitats, (ii) adverse effects on surface water or groundwater consistent with a deterioration in the water's status under the Water Framework Directive and (iii) contamination of land that results in a significant risk of adverse effects on human health.

7.2 When and under what circumstances does a person have an affirmative obligation to investigate land for contamination?

As noted in question 5.1 above, a new obligation will exist under the EDR in relation to contaminated land. The EDR will impose a new proactive requirement for businesses and industry to notify the regulator of both imminent and actual "environmental damage", one element of which is contamination of land that results in a significant risk of adverse effects on human health. Otherwise, an affirmative obligation to investigate land for contamination may arise in a number of other situations. For example:

- as a condition of planning permission;
- as a requirement of an application for a PPC permit;
- under Part IIA of the Environmental Protection Act 1990, or the Water Environment (Controlled Activities) (Scotland) Regulations 2005; and
- on application for the surrender of a Waste Management Licence or PPC permit.

7.3 To what extent is it necessary to disclose environmental problems, e.g. by a seller to a prospective purchaser in the context of merger and/or takeover transactions?

There is no general duty to disclose environmental problems to e.g. a prospective purchaser. Again the general principle "buyer beware" applies. However:

- where there is a danger of asbestos regarding the property, a seller may be compelled under asbestos legislation to disclose the risk;
- where there is a contaminated land issue, it may be in the seller's interest to "sell with information" to qualify under the relevant liability exclusion test; and
- where a warranty or indemnity has been granted in respect of the relevant transaction, non-disclosure may constitute a breach.

8 General

- 8.1 Is it possible to use an environmental indemnity to limit exposure for actual or potential environment-related liabilities, and does making a payment to another person under an indemnity in respect of a matter (e.g. remediation) discharge the indemnifier's potential liability for that matter?**

In relation to the exposure question: an indemnity can limit the costs a party is liable for. However, this indemnity will not be able to protect against a custodial sentence or reputational harm.

In relation to making a payment, that will not necessarily discharge the indemnifier's own liability. That will depend on what the payment is used for, to whom it is made and whether any other party could have a claim against the indemnifier.

- 8.2 Is it possible to shelter environmental liabilities off balance sheet, and can a company be dissolved in order to escape environmental liabilities?**

A company's balance sheet should show all its assets and liabilities, including its environmental liabilities. Financial Reporting Standard 12 governs the disclosure of contingent liabilities - including environmental liabilities.

Where a company is dissolved, this may result in its environmental liabilities being extinguished. However, liability could revert to a parent company or those who controlled the company as the courts could "pierce the corporate veil" if the company dissolution had been engineered to avoid liability or if others had exercised a sufficient degree of control over its activities also to be liable.

- 8.3 Can a person who holds shares in a company be held liable for breaches of environmental law and/or pollution caused by the company, and can a parent company be sued in its national court for pollution caused by a foreign subsidiary/affiliate?**

Shareholders who exercise such a degree of control over a company as to be culpable for environmental offences may be found personally liable. Provision for this is made in a number of pieces of legislation, including the Pollution Prevention and Control (Scotland) Regulations 2000 and the Environmental Protection Act 1990.

- 8.4 Are there any laws to protect "whistle-blowers" who report environmental violations/matters?**

Although currently there are no provisions which deal specifically with environmental "whistle-blowers", the Public Interest Disclosure Act 1998 makes provision to render an employee's contractual duty of confidentiality towards their employer void where this duty would prevent the employee from making a "protected disclosure". "Protected disclosures" include information which would show that a criminal offence has been or is likely to be committed, or that the environment has been, is being or is likely to be damaged. If an employee is dismissed for making a "protected disclosure", that dismissal is automatically unfair and compensation is potentially unlimited.

However, under the EDR, a new concept will be introduced so that any person affected or likely to be affected by "environmental damage" or any person who otherwise has a sufficient interest will have an express right to request that action be taken by notifying the enforcing authority of any "environmental damage" which has

occurred or of which there is an imminent threat.

- 8.5 Are group or "class" actions available for pursuing environmental claims, and are penal or exemplary damages available?**

No, none of these are available in Scotland.

9 Emissions Trading and Climate Change

- 9.1 What emissions trading schemes are in operation in Scotland and how is the emissions trading market developing there?**

Phase II of the European Union Emissions Trading Scheme is currently in operation in Scotland for the years 2008 until December 2012. The Greenhouse Gas Emissions Trading Scheme Regulations 2005 require those installations listed in Schedule 1 to obtain a greenhouse gas emissions permit where such activities result in the emission of carbon dioxide. Almost 100 installations participate in the scheme in Scotland.

The permit conditions require that the emissions of the installation are properly monitored and reported and that the operator of the installation surrenders, within four months of the end of each scheme year, allowances equal to the annual reportable emissions from the installation during that year.

To the extent that annual reportable emissions exceed an installation's allocated allowances for a scheme year, the operator will be required to purchase or otherwise obtain the required shortfall of allowances from third parties or by participating in any UK Government auction of allowances. An Operator who has surplus allowances in excess of its annual reportable emissions may either bank those allowances for a subsequent scheme year or trade or otherwise transfer those allowances to another participant in the scheme.

Allowances are allocated to each permitted installation in accordance with the Approved UK National Allocation Plan for Phase II of the EU Emissions Trading Scheme.

10 Asbestos

- 10.1 Is Scotland likely to follow the experience of the US in terms of asbestos litigation?**

The experience of litigation generally in Scotland is that it remains far less frequent than in the US. In addition the situation in the US in relation to asbestos litigation is very different to the position in Scotland due to the scale of the asbestos exposure, the volume of claims and the amount of compensation paid, and although asbestos litigation in Scotland is likely to increase over the coming years, we are unlikely to replicate the US experience.

It has been widely reported that the majority of claims brought in the US are raised by individuals with non-malignant conditions. A House of Lords decision in October 2007 held that symptomless pleural plaques were not to be actionable. This would have had a highly persuasive effect on Scottish courts.

However, the law of damages is a devolved matter and the Scottish Government introduced the Damages (Asbestos Related Conditions) (Scotland) Bill which, when passed, will reverse the judgment in so far as it applies to Scotland and allow those negligently exposed to asbestos and who have pleural plaques, asymptomatic asbestosis or pleural thickening to continue to raise and pursue actions for damages

in Scotland. The legislation will apply retrospectively from 17 October 2007, the date of the House of Lords' decision.

10.2 What are the duties of owners/occupiers of premises in relation to asbestos on site?

The Control of Asbestos Regulations 2006 set out the duties of employers and other "duty-holders" to manage asbestos. The Regulations place responsibilities on a wide range of "duty-holders" such as those who own, occupy or have legal or repair obligations in respect of part or whole of non-domestic premises.

A range of responsibilities are placed upon "duty-holders" in relation to assessing and managing asbestos risk. Where an assessment results in a finding of asbestos or that asbestos is liable to be present on the premises, a determination of the asbestos risk must be made together with a plan detailing the location of asbestos and the measures to be taken to manage the asbestos risk.

The condition of asbestos must be monitored on an ongoing basis and "duty-holders" must take the appropriate measures to maintain or remove it. A further duty placed upon "duty-holders" is to provide the information they have collected on the location and condition of asbestos to every person liable to disturb it and the emergency services.

11 Environmental Insurance Liabilities

11.1 What types of environmental insurance are available in the market, and how big a role does environmental risks insurance play in Scotland?

Historically, environmental insurance has not been widely purchased in Scotland. Environmental risk in sale and purchase transactions is usually allocated by way of warranties and indemnities. However, as companies become increasingly aware of the importance of their environmental liabilities, the market is developing. There are a range of insurance options available, including: environmental impairment policies, which cover potential liabilities arising from operations as well as historic contamination; and combined risk transfer, which combine the funding of projected remediation costs with insurance to cover potential (as yet unknown) costs and transfer liability to an environmental consultancy.

11.2 What is the environmental insurance claims experience in Scotland?

As mentioned in question 11.1 above, environmental insurance has not been widely purchased in Scotland and has only recently seen an increase in uptake. There have not been a large number of claims under these policies in Scotland to date. However, as companies increasingly opt to take out environmental insurance, it is likely that there will be an increase in claims.

12 Updates

12.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Environment Law in Scotland.

This year has seen important developments in environmental laws and policies in Scotland. Steps have been taken to implement the Mining Waste Directive and the Scottish Government has published its strategy for achieving Zero Waste. Holyrood has also published a Scottish Marine Bill to complement UK marine policy and - with the summer floods as a backdrop - introduced the Flood Risk Management (Scotland) Bill. Finally, whilst a single scheme of environmental permitting in England and Wales were introduced, Scotland has retained separate permits for waste, water and pollution control but each of these regimes is due to be updated and overhauled.

2008 also saw additional steps being taken to reduce carbon emissions from buildings with the next phase of energy performance certificates (EPCs) being rolled out. In Scotland residential properties only required EPCs from 1 December 2008, with commercial properties being brought within the scheme from 4 January 2009.

In January 2009 further amendments were made to the legislation which transposes the provisions of Habitats Directive in the UK. To address a number of gaps and inconsistencies in the UK's original transposition of the Habitats Directive (as highlighted in two ECJ judgments against the UK), the Government enacted new regulations applying the Directive to the "offshore marine area" and amended the existing onshore regime in 2007. The latest (2009) amendments were made because the European Commission had indicated it was still not entirely satisfied with the precision of the transposition in particular the species protection provisions (the so called "2nd pillar" of the Habitats Directive).

The Scottish Government introduced a Climate Change Bill into the Scottish Parliament in December 2008 which will set legal targets for the reduction of greenhouse gas emissions. An 80% reduction on 1990 baseline levels is required by 2050 with an interim target of 50% by 2030. To support the reduction of greenhouse gas emissions required to meet the statutory targets, the Scottish Ministers are required to publish a plan for the promotion of energy efficiency, including the use of renewable sources of energy.



Jennifer Ballantyne

McGrigors LLP
Pacific House, 70 Wellington Street
Glasgow G2 6SB
Scotland

Tel: +44 141 567 9355
Fax: +44 141 204 1351
Email: jennifer.ballantyne@mcgrigors.com
URL: www.mcgrigors.com

Jennifer has been a key member of McGrigors' UK Environmental Law team since 1992 and now leads that team. She has advised both owners and purchasers of industrial land across the UK on environmental liability and indemnity issues; clients across a variety of sectors (including energy, waste management, aggregates, ports and food and drink) on the introduction of new water abstraction, impoundment and discharge controls under the Water Framework Directive; audited a major UK plc's compliance with environmental law, providing comparative analysis of its obligations across the UK, as part of its Environmental Management System; advised renewable energy developers on schemes across the UK including CHP, wind farms (onshore and offshore - UK Rounds 1, 2 and 3), small scale hydro, biomass, landfill gas utilisation and carbon capture and storage. Jennifer is regularly invited to provide press comment, address conferences and lead workshops on developments in environmental law and is acknowledged as one of the leaders in her field.



Jennifer McCracken

McGrigors LLP
Pacific House, 70 Wellington Street
Glasgow G2 6SB
Scotland

Tel: +44 141 567 9355
Fax: +44 141 204 1351
Email: jennifer.mccracken@mcgrigors.com
URL: www.mcgrigors.com

Jennifer is a recent addition to the UK Environment Law team within McGrigors LLP, having graduated from Glasgow University with LLB (Hons) in 2006. Bringing a high level of research skills and enthusiasm, Jennifer has quickly become a valued member of the team, providing research and assistance on a wide variety of environmental matters; including environmental permits, regulatory compliance in waste management, and contaminated land, as well as planning and development issues. She holds a particular interest in the areas of climate change and renewable energy.



McGrigors LLP is one of the UK's most dynamic legal practices. With offices in London, Edinburgh, Glasgow, Belfast, Aberdeen and Manchester, McGrigors is the only legal practice in the UK to operate in all three jurisdictions. The practice also has a satellite office in Port Stanley in the Falkland Islands. A full-service commercial law firm, McGrigors has over 75 Partners and over 350 lawyers nationwide.

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