



Regulatory Reform (Scotland) Act 2014

2014 asp 3

PART 3

ENVIRONMENTAL REGULATION

CHAPTER 2

SEPA'S POWERS OF ENFORCEMENT

Variable monetary penalties

23 Variable monetary penalties

- (1) The Scottish Ministers may by order make provision for or about the imposition by SEPA of a variable monetary penalty on a person in relation to a relevant offence.
- (2) Provision under subsection (1) must provide that a variable monetary penalty—
 - (a) may be imposed on a person only where SEPA is satisfied on the balance of probabilities that the person has committed the offence to which the penalty relates,
 - (b) is to be imposed by notice, and
 - (c) may not be imposed on a person in relation to an offence constituted by an act or omission if a variable monetary penalty has already been imposed on that person in respect of the same offence constituted by the same act or omission.
- (3) For the purposes of this Chapter, a “variable monetary penalty” is, subject to subsection (4), a requirement to pay SEPA a penalty of such amount as SEPA may in each case determine.
- (4) SEPA may not in any case impose a variable monetary penalty that exceeds the maximum amount specified in an order made under subsection (1) in relation to that case.
- (5) The maximum amount that may be so specified is—
 - (a) in the case mentioned in subsection (6), the maximum amount of the fine that may be imposed on summary conviction in such a case,

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Changes to legislation: There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014, Cross Heading: Variable monetary penalties. (See end of Document for details)

- (b) in any other case, £40,000.
- (6) The case is one where the offence in respect of which the variable monetary penalty is imposed—
 - (a) is triable summarily (whether or not it is also triable on indictment), and
 - (b) is punishable on summary conviction by a fine (whether or not it is also punishable by a term of imprisonment).
- (7) The Scottish Ministers may by order substitute another sum for the one for the time being mentioned in subsection (5)(b).

Commencement Information

II S. 23 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), Sch.

24 Variable monetary penalties: procedure

- (1) Provision under section 23 must secure the results in subsection (2).
- (2) The results are that—
 - (a) where SEPA proposes to impose a variable monetary penalty on a person, it must serve on the person a notice (a “notice of intent”) which complies with subsection (3),
 - (b) the person may make written representations to SEPA in relation to the proposed imposition of the variable monetary penalty (including that the person would not, by reason of any defence, be liable to be convicted of the offence to which the penalty relates),
 - (c) SEPA must, after the end of the period for making such representations, decide whether to impose a variable monetary penalty and, if so, the amount of the penalty,
 - (d) SEPA must, in so deciding, have regard to any representations,
 - (e) where SEPA decides to impose a variable monetary penalty, the notice imposing it (the “final notice”) complies with subsection (4), and
 - (f) the person on whom a variable monetary penalty is imposed may appeal against the decision as to the imposition or amount of the penalty.
- (3) To comply with this subsection the notice of intent must include information as to—
 - (a) the grounds for the proposal to impose the variable monetary penalty,
 - (b) the right to make written representations, and
 - (c) the period within which representations may be made.
- (4) To comply with this subsection the final notice must include information as to—
 - (a) the grounds for imposing the penalty,
 - (b) how payment may be made,
 - (c) the period within which the payment must be made,
 - (d) any early payment discounts or late payment penalties,
 - (e) rights of appeal, and
 - (f) the consequences of non-payment.
- (5) Provision to secure the result in subsection (2)(c) must include provision for—

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- (a) the person on whom the notice of intent is served to be able to offer an undertaking as to action to be taken by that person, within such period as may be specified in the undertaking, for all or any of the following purposes—
 - (i) to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed,
 - (ii) to benefit the environment to the extent that the commission of the offence has harmed the environment,
 - (iii) to secure that no financial benefit arising from the commission of the offence accrues to the person,
 - (b) SEPA to be able to accept or reject such an undertaking, and
 - (c) SEPA to take any undertaking so accepted into account in its decision.
- (6) Provision to secure the result in subsection (2)(f) must secure that the grounds on which a person may appeal against a decision of SEPA—
- (a) include the grounds that—
 - (i) the decision was based on an error of fact,
 - (ii) the decision was wrong in law,
 - (iii) the amount of the penalty is unreasonable, and
 - (iv) the decision was unreasonable for any other reason, but
 - (b) do not include the ground that SEPA failed to comply with guidance issued to it by the Lord Advocate under section 31(1).

Commencement Information

I2 S. 24 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), Sch.

25 Variable monetary penalties: effect on criminal proceedings etc.

- (1) Provision under section 23 must secure the result in subsection (2) in a case where—
- (a) either—
 - (i) a variable monetary penalty is imposed on a person, or
 - (ii) an undertaking referred to in section 24(5) is accepted from a person,or
 - (b) both such a penalty is imposed on, and such an undertaking is accepted from, a person.
- (2) The result is that no criminal proceedings may be commenced against the person for an offence constituted by an act or omission if the variable monetary penalty or, as the case may be, the undertaking related to that offence constituted by that act or omission.
- (3) Provision under section 23 must provide that the period mentioned in subsection (4) is not to be counted in calculating any period within which criminal proceedings in respect of an act or omission in relation to which a notice of intent under section 24(2) (a) is served must be commenced.
- (4) The period is that beginning with the day on which the notice of intent is served and ending with the day which is the final day on which written representations may be made in relation to the notice.
- (5) The reference in subsection (2) to criminal proceedings being commenced is to be read as if it included a reference to—

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- (a) a warning being given by the procurator fiscal,
- (b) a conditional offer (within the meaning of section 302 of the Criminal Procedure (Scotland) Act 1995) being sent,
- (c) a compensation offer under section 302A of that Act being sent,
- (d) a combined offer under section 302B of that Act being sent, and
- (e) a work order under section 302ZA of that Act being made.

Commencement Information

I3 S. 25 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), Sch.

Status:

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Changes to legislation:

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