



# Regulatory Reform (Scotland) Act 2014

## 2014 asp 3

### PART 3

#### ENVIRONMENTAL REGULATION

### CHAPTER 2

#### SEPA'S POWERS OF ENFORCEMENT

##### *Variable monetary penalties*

#### **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

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*Changes to legislation: There are currently no known outstanding effects for the  
 Regulatory Reform (Scotland) Act 2014, Section 24. (See end of Document for details)*

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- (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—
  - (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

**II** S. 24 in force at 30.6.2014 by [S.S.I. 2014/160](#), art. 2(1)(2), [Sch.](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014, Section 24.