



Regulatory Reform (Scotland) Act 2014

2014 asp 3

PART 3

ENVIRONMENTAL REGULATION

CHAPTER 2

SEPA'S POWERS OF ENFORCEMENT

Operation of penalties and cost recovery

28 **Combination of sanctions**

- (1) Provision may not be made by order under section 20 and section 23 conferring powers on SEPA in relation to the same offence unless it secures that—
 - (a) SEPA may not serve a notice of intent referred to in section 21(2)(a) on a person in relation to an act or omission where a variable monetary penalty has been imposed on that person in relation to the act or omission, and
 - (b) SEPA may not serve a notice of intent referred to in section 24(2)(a) on a person in relation to any act or omission where—
 - (i) a fixed monetary penalty has been imposed on the person in relation to the act or omission, or
 - (ii) the person has discharged liability for a fixed monetary penalty in relation to that act or omission pursuant to section 21(3).
- (2) Provision under section 20 must secure that in a case where a notice of intent referred to in section 21(2)(a) is served on a person—
 - (a) SEPA may not, before the end of any period in which the person may discharge liability to the fixed monetary penalty pursuant to section 21(3), impose a variable monetary penalty on the person in respect of the act or omission to which the notice relates, and
 - (b) SEPA may not, if the person so discharges liability, impose a variable monetary penalty on the person in respect of that act or omission.

Status: This is the original version (as it was originally enacted).

- (3) Provision under section 20 must also secure that in a case where a fixed monetary penalty is imposed on a person, SEPA may not impose a variable monetary penalty on the person in respect of the act or omission giving rise to the penalty.
- (4) Provision under section 20 must also secure the result that a fixed monetary penalty in respect of an offence constituted by an act or omission may not be imposed on a person if, in respect of that offence as constituted by that act or omission—
- (a) criminal proceedings have been commenced against the person,
 - (b) the person has been given a warning by the procurator fiscal,
 - (c) the person has been sent a conditional offer (within the meaning of section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal)),
 - (d) the person has accepted, or is deemed to have accepted, a compensation offer issued under section 302A of that Act (compensation offer by procurator fiscal),
 - (e) the person has accepted, or is deemed to have accepted, a combined offer issued under section 302B of that Act, or
 - (f) a work order has been made against the person under section 303ZA of that Act (work orders).
- (5) Provision under section 23 must also secure the result that a variable monetary penalty in respect of an offence constituted by an act or omission may not be imposed on a person if, in respect of that offence as constituted by that act or omission—
- (a) criminal proceedings have been commenced against the person,
 - (b) the person has been given a warning by a procurator fiscal,
 - (c) the person has been sent a conditional offer (within the meaning of section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal)),
 - (d) the person has accepted, or is deemed to have accepted, a compensation offer issued under section 302A of that Act (compensation offer by procurator fiscal),
 - (e) the person has accepted, or is deemed to have accepted, a combined offer issued under section 302B of that Act, or
 - (f) a work order has been made against the person under section 303ZA of that Act (work orders).

29 Monetary penalties

- (1) An order under this Chapter which confers power on SEPA to require a person to pay a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty may include provision for—
- (a) early payment discounts,
 - (b) the payment of interest or other financial penalties for late payment of the penalty (such interest or other financial penalties not in total to exceed the amount of the penalty),
 - (c) enforcement of the penalty.
- (2) Where such provision is included, it may also provide for—
- (a) SEPA to recover the penalty, and any interest or other financial penalty for late payment, as a civil debt,

- (b) the penalty, and any interest or other financial penalty for late payment, to be recoverable as if it were payable under an extract registered decree arbitral bearing a warrant for execution issued by a sheriff of any sheriffdom.

30 Costs recovery

- (1) Provision under section 23 may include provision for SEPA to require a person on whom a variable monetary penalty is imposed to pay the costs incurred by SEPA in relation to the imposition of the penalty up to the time of its imposition.
- (2) Where such provision is included, it must secure that—
 - (a) a requirement to pay the costs is imposed by notice,
 - (b) the notice specifies the amount required to be paid,
 - (c) SEPA may be required to provide a detailed breakdown of the amount,
 - (d) the person required to pay costs may appeal against—
 - (i) the decision of SEPA to impose the requirement,
 - (ii) the decision of SEPA as to the amount of the costs (including that some or all of the costs were unnecessarily incurred),
 - (e) SEPA is required to publish guidance about how it will exercise the power conferred by the provision.
- (3) In subsection (1), the references to costs include in particular—
 - (a) investigation costs,
 - (b) administration costs,
 - (c) costs of obtaining expert advice (including legal advice).
- (4) Subsections (1)(b) and (c) and (2) of section 29 apply to costs required to be paid by virtue of subsection (1) of this section as they apply to a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty.