2015 CHAPTER 8

PART 6

CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES

Other civil enforcement measures

PROSPECTIVE

Variable monetary penalties: procedure etc.

87.—(1) Regulations made under section 86(1) must secure the results mentioned in subsection (2).

(2) The results are that—

(a) where the Department proposes to impose a variable monetary penalty on a reservoir manager, it must serve on the manager a notice of what is proposed (a "notice of intent") which complies with subsection (3),

(b) the reservoir manager may make written representations and objections to the Department in relation to the proposed imposition,

(c) after the end of the period for making such representations and objections, the Department must decide whether to impose the variable monetary penalty (with or without modifications),

(d) where the Department decides to impose a variable monetary penalty, the notice (the "final notice") must be served on the reservoir manager and comply with subsection (6),

(e) the reservoir manager on whom a variable monetary penalty is imposed may appeal to the Water Appeals Commission against the decision to impose it.

(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 representations and objections,

(c) the circumstances in which the Department may not impose the variable monetary penalty,

(d) the period within which representations and objections may be made, which must not exceed the period of 28 days beginning with the day on which the notice of intent was served.

(4) Provision to secure the result in subsection (2)(c)—

(a) must secure that the Department may not decide to impose a variable monetary penalty on a reservoir manager where it is satisfied that the manager would not, by reason of any defence, be liable to be convicted of the offence in relation to which it was imposed,

(b) may include provision for other circumstances in which the Department may not decide to impose a variable monetary penalty.

(5) Provision to secure the result in subsection (2)(c) must also include provision for—

(a) the reservoir manager on whom the notice of intent is served to be able to offer a written undertaking as to action to be taken by the manager (including the payment of a sum of money) to benefit any person affected by the offence,

(b) the Department to be able to accept or reject such an undertaking,

(c) the Department to take any undertaking so accepted into account in its decision.

(6) To comply with this subsection, the final notice must include information as to—

(a) the grounds for imposing the variable monetary penalty,

(b) how payment may be made,

(c) the period within which payment must be made,

(d) any early payment discounts or late payment penalties,

(e) rights of appeal, including the grounds of appeal, the procedure for making an appeal and the period within which an appeal may be made,

(f) the consequences of non-payment.

(7) Provision to secure the result in subsection (2)(e) must—

(a) secure that the grounds on which a reservoir manager may appeal against a decision of the Department include that—

(i) the decision was based on an error of fact,

(ii) the decision was wrong in law,

(iii) the amount of the variable monetary penalty was unreasonable,

(iv) the decision was unreasonable for any other reason,

(b) secure that the Commission may confirm or quash the decision.

(8) Regulations under section 86(1) may provide that, where a variable monetary penalty remains unpaid after the expiry of the period for payment of the penalty, it is recoverable as if it were payable under a court order.

Status:
This version of this provision is prospective.

Changes to legislation:
There are currently no known outstanding effects for the Reservoirs Act (Northern Ireland) 2015, Section 87.