

SCHEDULE 2

Variable monetary penalties etc.

CHAPTER 2

VMP Undertakings

VMP undertakings

12.—(1) A person on whom a notice of intent to issue a variable monetary penalty is served may offer a VMP undertaking, which SEPA may accept or reject.

(2) A “VMP undertaking” is an undertaking by the person on whom the notice of intent is served 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—

- (a) to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed;
- (b) to benefit the environment to the extent that the commission of the offence has harmed the environment;
- (c) to secure that no financial benefit arising from the commission of the offence accrues to the person.

(3) A person offering a VMP undertaking must do so in writing within the period for making written representations.

(4) A VMP undertaking must include—

- (a) information as to—
 - (i) the notice of intent to which the undertaking relates;
 - (ii) the act or omission giving rise to the relevant offence to which the notice of intent relates;
 - (iii) the action to be taken under the undertaking;
 - (iv) the period within which that action must be taken; and
 - (v) how and when the person is considered to have fulfilled the undertaking; and
- (b) a statement that the undertaking is made in accordance with this Schedule.

(5) A VMP undertaking accepted by SEPA may be varied (including by extending the period within which the action must be taken) if both parties agree in writing.

Inaccurate, incomplete and misleading information

13.—(1) SEPA may serve a notice on a person from whom SEPA has accepted a VMP undertaking, requiring that person to provide, within such period as SEPA may consider reasonable, sufficient information to determine whether the VMP undertaking has been complied with.

(2) A person who fails to provide such information, or provides inaccurate, misleading or incomplete information in relation to a VMP undertaking may be regarded by SEPA as not having complied with the undertaking.

Non-compliance penalties

14.—(1) SEPA may impose a non-compliance penalty on a person who fails to comply with a VMP undertaking which is accepted from the person.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(2) A “non-compliance penalty” is a requirement to pay SEPA an amount calculated in accordance with sub-paragraph (3).

(3) The amount of the non-compliance penalty is to be determined by SEPA and, subject to sub-paragraph (4), must be—

- (a) an amount equivalent to 140% of the variable monetary penalty which SEPA would have imposed by final notice had the undertaking not been accepted; or
- (b) a lesser amount, where SEPA considers there are exceptional circumstances justifying it.

(4) The maximum amount of the non-compliance penalty that may be imposed in any case is the same as the maximum amount of a variable monetary penalty which would apply in that case in accordance with paragraph 1(4).

(5) Where a decision is taken to impose a non-compliance penalty, SEPA may do so by serving a non-compliance penalty notice.

(6) A non-compliance penalty notice must include information as to—

- (a) the grounds for imposing the non-compliance penalty;
- (b) the amount of the penalty;
- (c) how payment may be made;
- (d) the period within which payment must be made;
- (e) late payment interest;
- (f) rights of appeal; and
- (g) the consequences of non-payment.

Appeals against non-compliance penalties

15.—(1) A person on whom a non-compliance penalty is imposed may appeal against the notice.

(2) An appeal under this paragraph may be made on one or more of the following grounds:—

- (a) the decision to serve the notice was based on an error of fact;
- (b) the decision was wrong in law;
- (c) the decision was unreasonable for any other reason (including that the amount of the penalty was unreasonable); or
- (d) any other reason.

(3) An appeal under this paragraph must be made within the period of 28 days beginning with the day on which the non-compliance penalty notice under paragraph 14 is served.

(4) Where an appeal is made under this paragraph, the non-compliance penalty is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.

Payment requirements for non-compliance penalties

16.—(1) Subject to sub-paragraph (2), the non-compliance penalty must be paid within 56 days beginning with the day the non-compliance penalty notice was served or such longer period as SEPA may specify in the notice.

(2) In the case of an appeal, any penalty which falls to be paid (whether because the penalty was upheld or because the appeal was withdrawn) is payable within—

- (a) the period referred to in sub-paragraph (1);
- (b) the period of 28 days beginning with the day the appeal is determined or withdrawn; or
- (c) such period as the Scottish Land Court may, in determining the appeal, specify,

whichever ends later.