



Reservoirs (Scotland) Act 2011

2011 asp 9

PART 1

RESERVOIRS

CHAPTER 9

CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES

Other civil enforcement measures

PROSPECTIVE

^{F1}78 Enforcement undertakings

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Textual Amendments

F1 Ss. 78-81 repealed (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [Sch. 3 para. 13\(2\)](#); S.S.I. 2014/160, art. 2(1)(2), Sch.

PROSPECTIVE

^{F1}79 Fixed monetary penalties

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Status: Point in time view as at 01/01/2015. This version of this cross heading contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Reservoirs (Scotland)

Act 2011, Cross Heading: Other civil enforcement measures. (See end of Document for details)

Textual Amendments

F1 Ss. 78-81 repealed (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [Sch. 3 para. 13\(2\)](#); S.S.I. 2014/160, art. 2(1)(2), Sch.

PROSPECTIVE

F1 80 Fixed monetary penalties: procedure

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Textual Amendments

F1 Ss. 78-81 repealed (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [Sch. 3 para. 13\(2\)](#); S.S.I. 2014/160, art. 2(1)(2), Sch.

PROSPECTIVE

F1 81 Fixed monetary penalties: criminal proceedings and conviction etc.

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Textual Amendments

F1 Ss. 78-81 repealed (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [Sch. 3 para. 13\(2\)](#); S.S.I. 2014/160, art. 2(1)(2), Sch.

82 Further enforcement measures

- (1) The Scottish Ministers may by order make provision about the imposition by SEPA on reservoir managers of controlled reservoirs of one or more further enforcement measures in relation to offences under this Part.
- (2) Before making an order under subsection (1), the Scottish Ministers must consult in accordance with section 86.
- (3) Provision under subsection (1)—
 - (a) must provide that further enforcement measures—
 - (i) may be imposed only where SEPA is satisfied beyond reasonable doubt that a reservoir manager has committed an offence under this Part,
 - (ii) may not be imposed on a reservoir manager on more than one occasion in relation to the same act or omission,
 - (iii) are to be imposed by notice,
 - (b) may provide that further enforcement measures may be imposed in addition to any requirement referred to in section 65(2) or 69(2).

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- (4) A further enforcement measure is [^{F2}either] of the following—
- ^{F3}(a)
- (b) a requirement to take such steps as SEPA may specify, within such period as it may specify, to secure that the offence does not continue or recur,
- (c) a requirement to take such steps as SEPA may specify, within such period as it may specify, to secure that the position is so far as possible restored to what it would have been if the offence had not been committed.
- (5) For the purposes of this Part—
- ^{F4} ^{F4} ^{F4}
... ..
- a “restraint notice” means a requirement referred to in subsection (4)(b),
- a “restoration notice” means a requirement referred to in subsection (4)(c).

Textual Amendments

F2 Word in s. 82(4) substituted (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), [Sch. 3 para. 13\(3\)\(a\)\(i\)](#); S.S.I. 2014/160, art. 2(1)(2), Sch.

F3 S. 82(4)(a) repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), [Sch. 3 para. 13\(3\)\(a\)\(ii\)](#); S.S.I. 2014/160, art. 2(1)(2), Sch.

F4 Words in s. 82(5) repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), [Sch. 3 para. 13\(3\)\(b\)](#); S.S.I. 2014/160, art. 2(1)(2), Sch.

Commencement Information

I1 S. 82 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, Sch.

83 Further enforcement measures: procedure

- (1) Provision under section 82(1) must secure the results in subsection (2).
- (2) The results are that—
- (a) where SEPA proposes to impose a further enforcement measure on a reservoir manager, it must give 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 SEPA in relation to the proposed imposition,
- (c) after the end of the period for making such representations and objections, SEPA must decide whether to—
- (i) impose the further enforcement measure (with or without modifications),
- (ii) impose any other further enforcement measure which SEPA may impose,
- (d) where SEPA decides to impose a further enforcement measure, the notice (the “final notice”) complies with subsection (6),
- (e) the reservoir manager on whom a further enforcement measure is imposed may appeal to the Scottish Ministers 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 further enforcement measure,
- (b) the right to make representations and objections,

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- (c) the circumstances in which SEPA may not impose the further enforcement measures,
 - (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 is given.
- (4) Provision to secure the result in subsection (2)(c)—
- (a) must secure that SEPA may not decide to impose a further enforcement measure 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 SEPA may not decide to impose a further enforcement measure.
- (5) Provision to secure the result in subsection (2)(c) must also include provision for—
- (a) the reservoir manager to whom the notice of intent is given to be able to offer an 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) SEPA to be able to accept or reject such an undertaking,
 - (c) SEPA 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 further enforcement measure,
 - ^{F5}(b)
 - (c) rights of appeal,
 - (d) the consequences of non-compliance.
- (7) Provision to secure the result in subsection (2)(e) must secure that the grounds on which a reservoir manager may appeal against a decision of SEPA include the following—
- (a) that the decision was based on an error of fact,
 - (b) that the decision was wrong in law,
 - ^{F6}(c)
 - (d) in the case of a restraint notice or a restoration notice, that the nature of the requirement is unreasonable,
 - (e) that the decision was unreasonable for any other reason.
- (8) Provision to secure the result in that subsection may include provision about the determining by or under the order of a fee, and the charging of any fee so determined, in connection with an appeal and may require the return of a fee paid in relation to an appeal which is upheld.

Textual Amendments

F5 S. 83(6)(b) repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 13(4)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

F6 S. 83(7)(c) repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 13(4)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

Commencement Information

I2 S. 83 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

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84 Further enforcement measures: criminal proceedings and conviction

- (1) Provision under section 82(1) must secure the result in subsection (2) in any of the following cases—
 - (a) where a further enforcement measure is imposed on a reservoir manager,
 - (b) where an undertaking referred to in section 83(5) is accepted from a reservoir manager.
- (2) The result is that the reservoir manager may not at any time be convicted of the offence in respect of the act or omission giving rise to the further enforcement measure or undertaking except in a case mentioned in subsection (3).
- (3) The case is where each of the following applies—
 - (a) a restraint notice or restoration notice is imposed on the manager, or an undertaking referred to in section 83(5) is accepted from the manager,
 - ^{F7}(b)
 - (c) the manager fails to comply with the restraint notice, restoration notice or undertaking.
- (4) Provision under section 82(1) may for the purposes of the case referred to in subsection (3) extend any period within which criminal proceedings may be instituted against the reservoir manager.

Textual Amendments

- F7** S. 84(3)(b) repealed (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [Sch. 3 para. 13\(5\)](#); S.S.I. 2014/160, art. 2(1)(2), Sch.

Commencement Information

- I3** S. 84 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, Sch.

85 Further enforcement measures: enforcement

- (1) Provision under section 82(1) may include provision for a reservoir manager to pay a monetary penalty (a “non-compliance penalty”) to SEPA if the manager fails to comply with any of the following—
 - (a) a restraint notice or restoration notice imposed on the manager,
 - (b) an undertaking referred to in section 83(5).
- (2) Provision pursuant to subsection (1) may—
 - (a) specify the amount of the non-compliance penalty,
 - (b) provide for the amount to be calculated by reference to criteria specified by order by the Scottish Ministers,
 - (c) provide for the amount to be determined by SEPA,
 - (d) provide for the amount to be determined in any other way,but may not specify an amount which exceeds, or make provision under which the amount may be calculated or determined so as to exceed, the maximum fine for which a person convicted of the offence concerned may be made liable on summary conviction.
- (3) Provision pursuant to subsection (1) must secure that—
 - (a) the non-compliance penalty is imposed by notice given by SEPA,

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- (b) the reservoir manager on whom it is imposed may appeal to the Scottish Ministers against the notice.
- (4) Provision pursuant to subsection (3)(b) must secure that the grounds on which a reservoir manager may appeal against a notice referred to in that subsection include the following—
- (a) that the decision to give the notice was based on an error of fact,
 - (b) that the decision was wrong in law,
 - (c) that the decision was unfair or unreasonable for any reason (including, in a case where the amount of the non-compliance penalty was determined by SEPA, that the amount was unreasonable).
- (5) An order under section 82(1) may provide that where a reservoir manager on whom a non-compliance penalty is imposed does not pay the penalty, the penalty is recoverable as if it were payable under an extract decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

Commencement Information

14 S. 85 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, Sch.

Status:

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Changes to legislation:

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