



Regulatory Reform (Scotland) Act 2014

2014 asp 3

PART 3

ENVIRONMENTAL REGULATION

CHAPTER 2

SEPA'S POWERS OF ENFORCEMENT

Enforcement undertakings

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- (1) The Scottish Ministers may by order make provision—
 - (a) for or about enabling SEPA to accept an enforcement undertaking from a person in a case where SEPA has reasonable grounds to suspect that the person has committed a relevant offence, and
 - (b) for the acceptance of the undertaking to have the consequences in subsection (4).
- (2) For the purposes of this Chapter, an “enforcement undertaking” is an undertaking to take action of a type mentioned in subsection (3) and specified in the undertaking within such period as may be so specified.
- (3) The types of action are—
 - (a) action to secure that the offence does not continue or recur,
 - (b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed,
 - (c) action of a description specified by order by the Scottish Ministers.
- (4) The consequences are that, unless SEPA has certified under provision made in pursuance of subsection (5)(g) that the person from whom the enforcement undertaking is accepted has not complied with the undertaking or any part of it—
 - (a) no criminal proceedings may be commenced against the person from whom the enforcement undertaking is accepted in respect of an offence constituted

Status: This is the original version (as it was originally enacted).

- by an act or omission if the undertaking relates to that offence constituted by that act or omission,
- (b) SEPA may not impose on the person a fixed monetary penalty which it would otherwise have power to impose by virtue of section 20 in respect of the act or omission, and
 - (c) SEPA may not impose on the person a variable monetary penalty which it would otherwise have power to impose by virtue of section 23 in respect of the act or omission.
- (5) An order under this section may in particular include provision—
- (a) as to the procedure for entering into an enforcement undertaking,
 - (b) as to the terms of an enforcement undertaking,
 - (c) as to publication of an enforcement undertaking by SEPA,
 - (d) as to variation of an enforcement undertaking,
 - (e) as to circumstances in which a person may be regarded as having complied with an enforcement undertaking,
 - (f) as to monitoring by SEPA of compliance with an enforcement undertaking,
 - (g) as to certification by SEPA that an enforcement undertaking or any part of it has not been complied with,
 - (h) for appeals against such certification,
 - (i) in a case where a person has given inaccurate, misleading or incomplete information in relation to an enforcement undertaking, for that person to be regarded as not having complied with it,
 - (j) in a case where a person has complied partly but not fully with an enforcement undertaking, for that partial compliance to be taken into account in the imposition of any criminal or other sanction on the person,
 - (k) for the purpose of enabling criminal proceedings in respect of an act or omission in relation to which SEPA has accepted an enforcement undertaking to be commenced against a person who has not complied with the undertaking or any part of it, for the period mentioned in subsection (6) not to be counted in calculating any period within which such proceedings must be commenced.
- (6) The period is that beginning with the day on which the enforcement undertaking is accepted and ending with—
- (a) the day on which SEPA certifies, under provision made in pursuance of subsection (5)(g), that the undertaking or any part of it has not been complied with, or
 - (b) where an appeal against such a certification is taken, the day on which the appeal is finally determined.
- (7) The reference in subsection (4)(a) to criminal proceedings being commenced is to be read as if it included a reference to—
- (a) a warning being given by the procurator fiscal,
 - (b) a conditional offer (within the meaning of section 302 of the Criminal Procedure (Scotland) Act 1995) being sent,
 - (c) a compensation offer under section 302A of that Act being sent,
 - (d) a combined offer under section 302B of that Act being sent, and
 - (e) a work order under section 302ZA of that Act being made.
- (8) References in this section to taking action specified in an enforcement undertaking include references to refraining from taking such action.