



# Regulatory Reform (Scotland) Act 2014

## 2014 asp 3

### PART 3

#### ENVIRONMENTAL REGULATION

#### CHAPTER 2

#### SEPA'S POWERS OF ENFORCEMENT

##### *Fixed monetary penalties*

#### **20 Fixed monetary penalties**

- (1) The Scottish Ministers may by order make provision for or about the imposition by SEPA of a fixed monetary penalty on a person in relation to a relevant offence.
- (2) Provision under subsection (1) must provide that a fixed monetary penalty—
  - (a) may be imposed on a person only where SEPA is satisfied on the balance of probabilities that the person has committed the offence to which the penalty relates,
  - (b) is to be imposed by notice, and
  - (c) may not be imposed on a person in relation to an offence constituted by an act or omission if a fixed monetary penalty has already been imposed on that person in respect of the same offence constituted by the same act or omission.
- (3) For the purposes of this Chapter, a “fixed monetary penalty” is a requirement to pay to SEPA a penalty of an amount specified in an order made under subsection (1).
- (4) The maximum amount of such penalty that may be so specified in relation to a particular offence is an amount equivalent to level 4 on the standard scale.
- (5) In this section, “the standard scale” has the meaning given by section 225(1) of the Criminal Procedure (Scotland) Act 1995.

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*Status: This is the original version (as it was originally enacted).*

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## **21 Fixed monetary penalties: procedure**

- (1) Provision under section 20—
  - (a) must secure the results in subsection (2) (“the mandatory results”),
  - (b) may secure the result in subsection (3) (“the optional result”).
- (2) The mandatory results are that—
  - (a) where SEPA proposes to impose a fixed monetary penalty on a person, it must serve on the person a notice of what is proposed (a “notice of intent”) which complies with subsection (4),
  - (b) except where the person has discharged liability by virtue of provision made under subsection (3), the person may make written representations to SEPA in relation to the proposed imposition of the fixed monetary penalty (including that the person would not, by reason of any defence, be liable to be convicted of the offence to which the penalty relates),
  - (c) SEPA must, after the end of the period for making representations, decide whether to impose the fixed monetary penalty,
  - (d) SEPA must, in so deciding, have regard to any representations,
  - (e) where SEPA decides to impose the fixed monetary penalty, the notice imposing it (“the final notice”) complies with subsection (5), and
  - (f) the person on whom a fixed monetary penalty is imposed may appeal against the decision to impose it.
- (3) The optional result is that the notice of intent also offers the person the opportunity to discharge the person’s liability for the fixed monetary penalty by payment of a sum specified in the notice of intent (which sum must be less than or equal to the amount of the penalty).
- (4) To comply with this subsection the notice of intent must include information as to—
  - (a) the grounds for the proposal to impose the fixed monetary penalty,
  - (b) the right to make written representations,
  - (c) the period within which representations may be made,
  - (d) where provision is made under subsection (3)—
    - (i) how payment to discharge the liability for the fixed monetary payment may be made,
    - (ii) the period within which liability for the fixed monetary penalty may be discharged, and
    - (iii) the effect of payment of the sum referred to in subsection (3).
- (5) To comply with this subsection the final notice must include information as to—
  - (a) the grounds for imposing the 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, and
  - (f) the consequences of non-payment.
- (6) Provision to secure the result in subsection (2)(f) must secure that the grounds on which a person may appeal against a decision of SEPA—
  - (a) include the grounds that—
    - (i) the decision was based on an error of fact,

- (ii) the decision was wrong in law, and
  - (iii) the decision was unreasonable, but
- (b) do not include the ground that SEPA failed to comply with guidance issued to it by the Lord Advocate under section 31(1).

## **22 Fixed monetary penalties: effect on criminal proceedings etc.**

- (1) Provision under section 20 must secure that in a case where a notice of intent referred to in section 21(2)(a) in respect of an offence constituted by an act or omission is served on a person—
- (a) no criminal proceedings may be commenced against the person in respect of that offence constituted by that act or omission—
    - (i) before the end of any period in which the person may discharge liability for the fixed monetary penalty pursuant to section 21(3), or
    - (ii) if the person so discharges liability, and
  - (b) the period as mentioned in subsection (2) is not to be counted in calculating any period within which criminal proceedings in respect of that offence constituted by that act or omission must be commenced.
- (2) The period is that beginning with the day on which the notice of intent is served and ending with the day which is the final day on which written representations may be made in relation to the notice.
- (3) Provision under section 20 must also secure that, in a case where a fixed monetary penalty is imposed on a person in respect of an offence constituted by an act or omission, no criminal proceedings may be commenced against the person in respect of that offence constituted by that act or omission.
- (4) The references in subsections (1)(a) and (3) to criminal proceedings being commenced are to be read as if they included references 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.