



# Regulatory Reform (Scotland) Act 2014

## 2014 asp 3

### PART 3

#### ENVIRONMENTAL REGULATION

### CHAPTER 2

#### SEPA'S POWERS OF ENFORCEMENT

##### *Guidance*

#### **31 Guidance as to use of enforcement measures**

- (1) The Lord Advocate may issue, and from time to time revise, guidance to SEPA on the exercise of its functions relating to enforcement measures.
- (2) SEPA must comply with such guidance or revised guidance in exercising those functions.
- (3) In this section, an “enforcement measure” means a fixed monetary penalty, variable monetary penalty or enforcement undertaking (and any references in this Chapter to the imposition of an enforcement measure include acceptance of an enforcement undertaking).
- (4) Where power is conferred on SEPA by virtue of this Chapter to impose an enforcement measure in relation to an offence, the provision conferring the power must secure the results in subsection (5).
- (5) The results are that—
  - (a) SEPA must publish guidance about—
    - (i) how the offence is enforced,
    - (ii) the sanctions (including criminal sanctions) to which a person who commits the offence may be liable,
    - (iii) the action which SEPA may take to enforce the offence, whether by virtue of this Chapter or otherwise,
    - (iv) the circumstances in which SEPA is likely to take any such action,

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*Status: This is the original version (as it was originally enacted).*

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- (v) SEPA's use of the enforcement measure,
  - (b) in the case of guidance relating to a fixed monetary penalty or variable monetary penalty, the guidance must contain the relevant information, and
  - (c) SEPA must have regard to the guidance in exercising its functions.
- (6) In the case of guidance relating to a fixed monetary penalty, the relevant information referred to in subsection (5)(b) is information as to—
- (a) the circumstances in which the penalty is likely to be imposed,
  - (b) the circumstances in which it may not be imposed,
  - (c) the amount of the penalty,
  - (d) how liability for the penalty may be discharged and the effect of discharge, and
  - (e) rights to make representations and rights of appeal.
- (7) In the case of guidance relating to a variable monetary penalty, the relevant information referred to in subsection (5)(b) is information as to—
- (a) the circumstances in which the penalty is likely to be imposed,
  - (b) the circumstances in which it may not be imposed,
  - (c) the matters likely to be taken into account by SEPA in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance), and
  - (d) rights to make representations and rights of appeal.
- (8) SEPA may from time to time revise guidance published by it by virtue of subsection (5).
- (9) The references in subsections (5) to (7) to guidance include references to any revised guidance under subsection (8).
- (10) Before publishing any guidance or revised guidance by virtue of this section, SEPA must consult—
- (a) the Lord Advocate, and
  - (b) such other persons as it considers appropriate.