



# Regulatory Reform (Scotland) Act 2014

## 2014 asp 3

### PART 3

#### ENVIRONMENTAL REGULATION

#### CHAPTER 2

#### SEPA'S POWERS OF ENFORCEMENT

##### *Fixed monetary penalties*

#### **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.

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*Changes to legislation:* There are currently no known outstanding effects for the Regulatory Reform (Scotland) Act 2014, Section 21. (See end of Document for details)

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- (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).

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**Commencement Information**

**II** S. 21 in force at 30.6.2014 by S.S.I. 2014/160, art. 2(1)(2), Sch.

**Changes to legislation:**

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