



Reservoirs (Scotland) Act 2011

2011 asp 9

PART 1

RESERVOIRS

CHAPTER 9

CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES

Other civil enforcement measures

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,

Status: This is the original version (as it was originally enacted).

- (b) the right to make representations and objections,
 - (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,
 - (b) where the further enforcement measure is a variable monetary penalty—
 - (i) how payment may be made,
 - (ii) the period within which payment must be made,
 - (iii) any early payment discounts or late payment penalties,
 - (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,
 - (c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable,
 - (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.