



2015 CHAPTER 8

PART 6

CIVIL ENFORCEMENT, EMERGENCY  
POWERS AND FURTHER OFFENCES

*Other civil enforcement measures*

**Undertaking referred to in section 87(5): enforcement**

**89.—(1)** Regulations under section 86(1) may include provision for a reservoir manager to pay a monetary penalty (a “non-compliance penalty”) to the Department if the manager fails to comply with an undertaking referred to in section 87(5).

(2) The regulations—

(a) may specify the amount of the non-compliance penalty and provide for the amount to be—

(i) determined by the Department or determined in any other way,

(ii) calculated by reference to criteria specified in the regulations, but

(b) may not specify an amount which exceeds, or make provision under which the amount may be calculated or determined so as to exceed, the maximum fine for which a person convicted of the offence may be made liable on summary conviction.

(3) Provision pursuant to subsection (1) must secure that—

(a) the non-compliance penalty is imposed by notice complying with subsection (4), served by the Department on the reservoir manager,

- (b) the reservoir manager on whom it is imposed may appeal to the Water Appeals Commission against the notice.
- (4) To comply with this subsection, the notice must include information as to—
- (a) the amount of the penalty,
  - (b) how the amount is determined or calculated,
  - (c) the undertaking that has not been complied with,
  - (d) how payment of the penalty may be made,
  - (e) the right of appeal, including the grounds of appeal, the procedure for making an appeal and the period within which an appeal may be made,
  - (f) the consequences of non-payment.
- (5) Provision conferring a right of appeal must—
- (a) secure that the grounds on which a reservoir manager may appeal against a notice referred to in subsection (3)(a) include the following—
    - (i) that the decision to give the notice was based on an error of fact,
    - (ii) that the decision was wrong in law,
    - (iii) that the decision was unreasonable (including that the amount was unreasonable),
  - (b) secure that the Commission may confirm or quash the decision.
- (6) Regulations under section 86(1) may provide that, where a reservoir manager on whom a non-compliance penalty is imposed does not pay the penalty, the penalty is recoverable as if it were payable under a court order.