

SCHEDULE 2

Variable monetary penalties etc.

CHAPTER 1

Variable Monetary Penalties

Power to impose variable monetary penalties

1.—(1) SEPA may by notice impose a variable monetary penalty on a person in relation to a relevant offence.

(2) Before doing so SEPA must be satisfied on the balance of probabilities that the person has committed the offence to which the penalty relates.

(3) A “variable monetary penalty” is, subject to sub-paragraph (4), a requirement to pay SEPA a penalty of such an amount as SEPA may in each case determine.

(4) SEPA may not impose a variable monetary penalty that exceeds the following maximum amounts—

- (a) in the case mentioned in sub-paragraph (5), the maximum amount of the fine that may be imposed on summary conviction in such a case; and
- (b) in any other case, £40,000.

(5) The case is one where the offence in respect of which the variable monetary penalty is imposed is—

- (a) triable summarily (whether or not it is also triable on indictment); and
- (b) is punishable on summary conviction by a fine (whether or not it is also punishable by a term of imprisonment).

Relevant offences for variable monetary penalties

2.—(1) For the purposes of this Schedule and section 23 of the Act (variable monetary penalties), “relevant offence” means an offence specified in Schedule 4, if the table in that Schedule indicates that a variable monetary penalty may be imposed.

(2) In relation to a relevant offence (“the principal offence”), the following offences are also relevant offences for those purposes—

- (a) any attempt, conspiracy or incitement to commit the principal offence; and
- (b) an offence under section 293(2) of the Criminal Procedure (Scotland) Act 1995 (statutory offences: art and part and aiding or abetting) as it applies in relation to the principal offence.

(3) For the purposes of sub-paragraph (1), the table in Schedule 4—

- (a) indicates that, in relation to an offence, a variable monetary penalty may be imposed if the third column of the table contains the word “YES” in the row relating to the offence; and
- (b) does not so indicate if that column contains the word “NO” in the row relating to the offence.

Notice of intent

3.—(1) Where SEPA proposes to impose a variable monetary penalty on a person, it must serve on the person a notice of what is proposed (a “notice of intent”).

(2) The notice of intent must include information as to—

- (a) the proposed amount of the penalty;

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- (b) the grounds for the proposal to impose the variable monetary penalty;
- (c) the right to make written representations;
- (d) the period within which representations may be made; and
- (e) the option to offer a VMP undertaking within the period for making written representations.

Right to make written representations

4.—(1) A person on whom a notice of intent is served may, within 28 days beginning with the day on which the notice was served, make written representations to SEPA in relation to the proposed imposition of the variable monetary penalty.

(2) Written representations may in particular include representations that the person would not, by reason of any defence, be liable to be convicted of the offence to which the penalty relates.

(3) The period mentioned in sub-paragraph (1) may be extended by agreement in writing between SEPA and the person on whom the notice was served.

Decision to impose a variable monetary penalty

5.—(1) SEPA must, after the end of the period for making written representations, decide whether to impose a variable monetary penalty and, if so, the amount of the penalty.

(2) In making that decision, SEPA must—

- (a) have regard to any representations made in accordance with paragraph 4; and
- (b) take into account any VMP undertaking accepted by it.

Final notice

6.—(1) Where a decision is taken to impose a variable monetary penalty, SEPA may do so by serving a final notice.

(2) A final notice must include information as to—

- (a) the amount of the penalty;
- (b) the grounds for imposing the penalty;
- (c) how payment may be made;
- (d) the period within which payment must be made;
- (e) late payment interest;
- (f) rights of appeal; and
- (g) the consequences of non-payment.

(3) SEPA may not serve a final notice after a period of six months beginning with the day which is the final day on which written representations may be made in relation to the notice of intent.

(4) The period mentioned in sub-paragraph (3) may be extended by agreement in writing between SEPA and the person on whom the notice was served.

Appeals against variable monetary penalties

7.—(1) A person on whom a variable monetary penalty is imposed may appeal against the decision as to the imposition or amount of the penalty.

(2) An appeal under this paragraph may be made on one or more of the following grounds:—

- (a) the decision was based on an error of fact;

- (b) the decision was wrong in law;
- (c) the amount of the penalty is unreasonable;
- (d) the decision was unreasonable for any other reason; or
- (e) any other reason.

(3) The grounds on which a person may appeal under this paragraph do not include the ground that SEPA failed to comply with guidance issued to it by the Lord Advocate under section 31(1) of the Act.

(4) An appeal under this paragraph must be made within the period of 28 days beginning with the day on which the final notice under paragraph 6(1) is served.

(5) Where an appeal is made under this paragraph, the variable monetary penalty is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.

Payment requirements for variable monetary penalties

8.—(1) Subject to paragraph (2), the variable monetary penalty must be paid within 56 days beginning with the day the final notice was served or such longer period as SEPA may specify in the final notice.

(2) In the case of an appeal, any penalty which falls to be paid (whether because the penalty was upheld or because the appeal was withdrawn) is payable within—

- (a) the period referred to in sub-paragraph (1);
 - (b) the period of 28 days beginning with the day the appeal is determined or withdrawn; or
 - (c) such period as the Scottish Land Court may, in determining the appeal, specify,
- whichever ends later.

Costs recovery notices

9.—(1) SEPA may serve a notice on a person on whom a variable monetary penalty has been imposed, requiring that person to pay the costs incurred by SEPA in relation to the imposition of the penalty up to the time of its imposition (a “costs recovery notice”).

(2) In this paragraph, “costs” include in particular—

- (a) investigation costs (including the costs of monitoring the environment to determine the harm caused by the relevant offence to which the penalty relates);
- (b) administration costs; and
- (c) costs of obtaining expert advice (including legal advice).

(3) The costs recovery notice must specify—

- (a) the amount required to be paid;
- (b) how payment may be made;
- (c) the period within which payment must be made;
- (d) that SEPA may be required to provide a detailed breakdown of the amount (unless such a breakdown is provided by SEPA with the notice itself);
- (e) the rights of appeal; and
- (f) consequences of non-payment.

(4) The person on whom the notice is served may require SEPA to provide a detailed breakdown of the amount required to be paid (unless such a breakdown has already been provided).

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(5) SEPA must take such steps as are reasonable to ensure that the detailed breakdown is sent to the person requesting it within a period of 21 days from the date of the request.

Appeals against costs recovery notices

10.—(1) The person required to pay costs may appeal against—

- (a) the decision of SEPA to impose the requirement; and
- (b) the decision of SEPA as to the amount of the costs (including that some or all of the costs were unnecessarily incurred).

(2) An appeal under this paragraph must be made within the period of 28 days beginning with—

- (a) the day on which the costs recovery notice under paragraph 9(1) is served; or
- (b) where a person requests a detailed breakdown of the costs recovery notice, the day on which that breakdown is sent by SEPA.

(3) Where an appeal is made under this paragraph, the costs recovery notice is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.

Payment requirements for costs recovery notices

11.—(1) Subject to sub-paragraph (2), the amount required to be paid under the costs recovery notice must be paid within 56 days beginning with the day the notice was served or such longer period as SEPA may specify in the notice.

(2) In the case of an appeal, any costs which fall to be paid (whether because the penalty was upheld or because the appeal was withdrawn) are payable within—

- (a) the period referred to in sub-paragraph (1);
- (b) the period of 28 days beginning with the day the appeal is determined or withdrawn; or
- (c) such period as the Scottish Land Court may, in determining the appeal, specify,

whichever ends later.