

SCHEDULE 3

Articles 2(1), 3(3)

Enforcement undertakings

Enforcement undertakings

1.—(1) Where a person offers SEPA an enforcement undertaking, SEPA may accept it in accordance with sub-paragraph (2) or reject it.

(2) SEPA may only accept an enforcement undertaking from a person where SEPA has reasonable grounds to suspect that the person has committed a relevant offence.

(3) An “enforcement undertaking” is an undertaking to take such action of a type mentioned in sub-paragraph (4) and specified in the undertaking within such period as may be so specified.

(4) The types of action are—

- (a) action to secure that the offence does not continue or recur;
- (b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed; and
- (c) any other action that will secure benefits or improvements to the environment (including the payment of a sum of money to a third party).

(5) In this Schedule, references to taking action specified in an enforcement undertaking include references to refraining from taking such action.

Relevant offences for enforcement undertakings

2.—(1) For the purposes of this Schedule and section 27 of the Act (enforcement undertakings), “relevant offence” means an offence specified in Schedule 4, if the table in that Schedule indicates that an enforcement undertaking may be accepted.

(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, an enforcement undertaking may be accepted, if the fourth 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.

Contents of an enforcement undertaking

3.—(1) An enforcement undertaking must be made in writing.

(2) An enforcement undertaking must include—

- (a) information as to—
 - (i) the act or omission giving rise to the relevant offence to which the undertaking relates;
 - (ii) the action to be taken under the undertaking;
 - (iii) the period within which that action must be taken;
 - (iv) how and when the person is considered to have fulfilled the undertaking; and

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(b) a statement that the undertaking is made in accordance with this Schedule.

(3) An enforcement undertaking accepted by SEPA may be varied (including by extending the period within which the action must be taken) if both parties agree in writing.

Consequences of an enforcement undertaking and certificates of non-compliance

4.—(1) If SEPA accepts an enforcement undertaking and has not issued a certificate of non-compliance in relation to it—

- (a) no criminal proceedings may be commenced against the person from whom the enforcement undertaking is accepted in respect of an offence constituted by an act or omission if the undertaking relates to that offence constituted by that act or omission; and
- (b) SEPA may not impose on that person a fixed monetary penalty or variable monetary penalty in respect of the act or omission.

(2) If SEPA is satisfied that an enforcement undertaking, or any part of it, has not been complied with it may issue a certificate to that effect (a “certificate of non-compliance”).

(3) For the purpose of enabling criminal proceedings in respect of an act or omission in relation to which SEPA has accepted an enforcement undertaking to be commenced against a person who has not complied with the undertaking or any part of it, the period mentioned in sub-paragraph (4) is not to be counted in calculating any period within which such proceedings must be commenced.

(4) The period is that beginning with the day on which the enforcement undertaking is accepted and ending with—

- (a) the day on which SEPA issues a certificate of non-compliance; or
- (b) where an appeal against such a certificate is taken, the day on which the appeal is finally determined.

(5) SEPA may revoke a certificate of non-compliance by notice at any time.

(6) Where SEPA revokes a certificate of non-compliance, this paragraph applies as if the certificate had not been issued.

(7) The reference in subparagraph (1)(a) to criminal proceedings being commenced is to be read as if it included a reference to—

- (a) a warning being given by the procurator fiscal;
- (b) a conditional offer (within the meaning of section 302 of the Criminal Procedure (Scotland) Act 1995) being sent;
- (c) a compensation offer under section 302A of that Act being sent;
- (d) a combined offer under section 302B of that Act being sent; and
- (e) a work order under section 302ZA of that Act being made.

Inaccurate, incomplete or misleading information

5.—(1) SEPA may serve a notice on a person from whom SEPA has accepted an enforcement undertaking requiring that person to provide, within such period as SEPA may consider reasonable, sufficient information to determine whether the undertaking has been complied with.

(2) A person who fails to provide such information, or provides inaccurate, misleading or incomplete information in relation to an enforcement undertaking, is to be regarded as not having complied with the undertaking.

Appeal against a certificate of non-compliance

6.—(1) A person who is issued a certificate of non-compliance may appeal against it.

(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 decision was unreasonable; or
- (d) any other reason.

(3) An appeal under this paragraph must be made within the period of 28 days beginning with the day on which the certificate of non-compliance is issued.

(4) Where an appeal is made under this paragraph, the certificate of non-compliance has no effect from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.