

SCHEDULE 3

Enforcement undertakings

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.