Regulatory Reform (Scotland) Act 2014

2014 asp 3

PART 3

ENVIRONMENTAL REGULATION

CHAPTER 2

SEPA'S POWERS OF ENFORCEMENT

Non-compliance penalties

26   Undertakings under section 24: non-compliance penalties

(1) Provision under section 23 may include provision for a person to pay a monetary penalty (in this Part, a "non-compliance penalty") to SEPA if the person fails to comply with an undertaking referred to in section 24(5) which is accepted from the person.

(2) Where such provision is included, it may also—

    (a) specify the amount of the non-compliance penalty,

    (b) provide for the amount to be calculated by reference to criteria specified by order by the Scottish Ministers,

    (c) provide for the amount to be determined by SEPA (subject to any maximum amount set out in the provision),

    (d) provide for the amount to be determined in any other way.

(3) Where provision is included as mentioned in subsection (1), it must provide that the maximum amount of the non-compliance penalty that may be imposed in any case is not to exceed the maximum amount of the variable monetary penalty to which the non-compliance penalty relates in such a case.

(4) Where provision is included as mentioned in subsection (1), it must secure that—

    (a) the non-compliance penalty is imposed by notice served by SEPA, and

    (b) the person on whom it is imposed may appeal against the notice.

(5) Provision pursuant to subsection (4)(b) must secure that the grounds on which a person may appeal against a notice referred to in that subsection include that—

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(a)   the decision to serve the notice was based on an error of fact,

(b)   the decision was wrong in law,

(c)   the decision was unreasonable for any reason (including, in a case where the amount of the non-compliance penalty was determined by SEPA, that the amount is unreasonable).