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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order is made under the powers in Chapter 2 of Part 3 of the Regulatory Reform (Scotland) Act 2014. It provides the Scottish Environment Protection Agency (“SEPA”) with powers to impose civil enforcement measures on persons in relation to the offences specified in Schedule 4 to the Order (“relevant offences”). The enforcement measures are fixed monetary penalties, variable monetary penalties and enforcement undertakings.

The Order makes provision for fixed monetary penalties at Schedule 1. SEPA may impose a fixed penalty notice when satisfied, on the balance of probabilities, that a person has committed a relevant offence (paragraph 1). The amount of the fixed monetary penalties are £300, £600 or £1000 depending on the offence (the amounts are prescribed by paragraph 3 of Schedule 1 and Schedule 4). The procedure for imposing the penalty is provided for at paragraphs 4 to 7. Paragraph 8 makes provision for appeals. Paragraphs 9 and 10 provide for the payment requirements and for a late payment penalty which may be imposed if those are not met. The effect of being served a fixed monetary penalty on criminal proceedings is provided for at paragraph 11.

The Order makes provision for variable monetary penalties at Schedule 2. Variable monetary penalties are penalties of an amount which SEPA may in each case determine up to a statutory maximum (paragraph 1). They can be imposed where SEPA is satisfied, on the balance of probabilities, that a person has committed a relevant offence (paragraph 1). The procedure for imposing such a penalty is provided for at paragraphs 3 to 6. Paragraph 7 provides for an appeal against the imposition of the penalty or the amount. Under paragraph 9, SEPA may recover costs incurred by them in relation to imposing a variable monetary penalty.

Schedule 2 also provides that SEPA may accept a VMP undertaking (paragraph 12 of Schedule 2). This is an undertaking which may be offered by a person who has been served with a notice of intent relating to a variable monetary penalty. SEPA may impose a non-compliance penalty on a person who fails to comply with such an undertaking (paragraphs 14 to 16 of Schedule 2).

Paragraph 18 of Schedule 2 provides for late payment interest for late payment of variable monetary penalties, non-compliance penalties or costs recovery notices.

Schedule 3 makes provision for and about enforcement undertakings. These are voluntary undertakings to take certain types of action, for example to secure the offence does not recur, or restore, benefit or improve the environment. SEPA may accept an offer of an undertaking if it has reasonable grounds to suspect that the person offering it has committed a relevant offence (paragraph 1). The requirements of what an enforcement undertaking must contain are provided for in paragraph 3 of that Schedule. The consequences of SEPA accepting such an undertaking are, unless SEPA has issued a certificate of non-compliance, that no criminal proceedings can be commenced against the person for the relevant offence and no other enforcement measures can be imposed in relation to it (paragraph 4 of Schedule 3). Certificates of non-compliance are provided for at paragraph 4, and can be appealed against (paragraph 6 of Schedule 3).

Article 5 of the Order permits SEPA to recover any of the penalties under the Order as a civil debt. Articles 7 and 8 provide for an appeals mechanism to the Scottish Land Court. It provides that appeals may be made by written representations and without an oral hearing in certain circumstances. It also makes provision for expenses.

Articles 9 and 10 provide that guidance must be prepared by SEPA and had regard to when exercising their functions. Article 11 makes provision for the publication of information on enforcement action.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 No. 383*

Article 12 provides that any sums received by SEPA in respect of enforcement action under the Order must be paid to the Scottish Ministers.

The Order makes consequential amendment to the Scottish Land Court Act 1993 to ensure that the Court of Session can hear appeals from the Land Court in relation to this Order. It also amends the Scottish Land Court (Fees) Order 1996 to ensure that appeals made under this Order are exempt from the requirement to pay a fee for lodging an application to appeal to the Scottish Land Court.