
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2015 No.

The Environmental Regulation (Enforcement Measures) (Scotland) Order 2015

PART 3

Administration and Enforcement

Recovery of payments

5.—(1) SEPA may recover as a civil debt any—

- (a) fixed monetary penalty;
- (b) variable monetary penalty;
- (c) non-compliance penalty;
- (d) costs required to be paid under a costs recovery notice;
- (e) late payment interest; or
- (f) late payment penalty.

(2) The amount is recoverable as if it were payable under an extract registered decree arbitral bearing a warrant for execution issued by a sheriff of any sheriffdom.

Withdrawal of notice etc.

6. SEPA may by notice at any time—

- (a) withdraw a fixed monetary penalty notice; or
- (b) withdraw a variable monetary penalty notice, a non-compliance penalty notice or a costs recovery notice or reduce the amount specified in the notice.

Appeals

7.—(1) This article applies to any appeal under this Order.

(2) An appeal is to the Scottish Land Court⁽¹⁾.

(3) An appeal shall be in such form as may be prescribed from time to time by the Scottish Land Court.

(4) In any appeal where the commission of an offence is an issue requiring determination, SEPA must prove the offence according to the balance of probabilities.

(5) The Scottish Land Court may determine a case, or any part of a case, on the basis of written submissions and without a hearing where—

- (a) both parties agree; or

(1) The Scottish Land Court was established by section 3 of the Small Landholders (Scotland) Act 1911, and continued in being under section 1 of the Scottish Land Court Act 1993 (c.45).

(b) subject to paragraph (6), the Court considers that it can justly determine the matter without a hearing.

(6) Where paragraph (5)(b) applies, the Court must not determine the appeal without a hearing without first giving the parties notice of its intention to do so, and an opportunity to make written representations as to whether there should be a hearing.

Powers of the Court

8.—(1) On an appeal under paragraph 8(1) of Schedule 1 (fixed monetary penalties) the Court may quash or confirm the penalty.

(2) On an appeal under paragraph 7(1) (variable monetary penalties), 10(1) (costs recovery notices) or 15(1) (non-compliance penalties) of Schedule 2, the Court may do one or more of the following:—

- (a) quash, confirm or vary the penalty, requirement or notice (in whole or in part);
- (b) take such steps as SEPA could take under this Order in relation to the act or omission giving rise to the penalty, requirement or notice; or
- (c) remit the matter, or any aspect of it, to SEPA for further consideration.

(3) On an appeal under paragraph 6(1) of Schedule 3 (certificates of non-compliance), the Court may quash or confirm the certificate.

(4) Subject to paragraphs (5) and (6), on an appeal under this Order the Scottish Land Court may not make an order in respect of expenses.

(5) The Court may make an order awarding expenses for the court fees paid or payable.

(6) The Court may make an order in respect of expenses where the Court considers that a party or their representatives has acted unreasonably in bringing, defending or conducting the proceedings.

Guidance

9.—(1) Where power is conferred on SEPA by this Order to impose an enforcement measure in relation to an offence, SEPA must publish guidance about—

- (a) how the offence is enforced;
- (b) the sanctions (including criminal sanctions) to which a person who commits the offence may be liable;
- (c) the action which SEPA may take to enforce the offence, whether by virtue of this Order or otherwise;
- (d) the circumstances in which SEPA is likely to take any such action;
- (e) SEPA's use of the enforcement measure; and
- (f) in the case of guidance relating to a fixed monetary penalty or variable monetary penalty, the guidance must contain the relevant information provided for in paragraph (2) or (3) as the case may be.

(2) In the case of guidance relating to a fixed monetary penalty, the relevant information referred to in paragraph (1)(f) is information as to—

- (a) the circumstances in which the penalty is likely to be imposed;
- (b) the circumstances in which it may not be imposed;
- (c) the amount of the penalty; and
- (d) rights to make representations and rights of appeal.

(3) In the case of guidance relating to a variable monetary penalty, the relevant information referred to in paragraph (1)(f) is information as to—

- (a) the circumstances in which the penalty is likely to be imposed;
- (b) the circumstances in which it may not be imposed;
- (c) the matters likely to be taken into account by SEPA in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance);
- (d) rights to make representations and rights of appeal; and
- (e) SEPA’s use of non-compliance penalties.

(4) SEPA must have regard to the guidance in exercising its functions.

(5) An “enforcement measure” means a fixed monetary penalty, variable monetary penalty or enforcement undertaking (and any references to the imposition of an enforcement measure include acceptance of an enforcement measure).

(6) In this article, any references to guidance include references to any guidance revised by virtue of section 31(8) of the Act.

Additional guidance

10.—(1) SEPA must publish guidance about how SEPA will use costs recovery notices, including information as to—

- (a) the circumstances in which they are likely to be used;
- (b) the circumstances in which they may not be used;
- (c) matters to be taken into account in establishing the amount involved; and
- (d) rights of appeal.

(2) SEPA must have regard to the guidance in exercising its functions.

Publication of enforcement action

11.—(1) SEPA must from time to time publish information about—

- (a) the number and type of cases in which fixed monetary penalties, variable monetary penalties, non-compliance penalties and costs recovery notices have been imposed; and
- (b) the number and type of cases in which a VMP undertaking or enforcement undertaking has been accepted by SEPA.

(2) Where SEPA—

- (a) imposes a fixed monetary penalty, variable monetary penalty or non-compliance penalty; or
- (b) accepts an enforcement undertaking or VMP undertaking,

SEPA may publish the final notice, non-compliance penalty notice or undertaking (as the case may be) in any manner SEPA thinks fit.

(3) In paragraph (1)(a) or (2)(a) the references to cases in which penalties have been imposed do not include cases where the penalty has been imposed but overturned on appeal.

Payment of penalties etc to the Scottish Ministers

12. Where, by virtue of this Order, SEPA receive any sum in respect of—

- (a) a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty; or

(b) any interest or other financial penalty for late payment of such a penalty,
SEPA must pay it to the Scottish Ministers.