

SCHEDULE 1

Articles 2(1), 3(1)

Fixed monetary penalties

Power to impose fixed monetary penalties

1.—(1) SEPA may by notice impose a fixed monetary penalty on a person in relation to a relevant offence.

(2) Before doing so SEPA must be satisfied on the balance of probabilities that the person has committed the offence to which the penalty relates.

(3) A “fixed monetary penalty” is a requirement to pay to SEPA a penalty of the amount specified in paragraph 3.

Relevant offences for fixed monetary penalties

2.—(1) For the purposes of this Schedule and section 20 of the Act (fixed monetary penalties), “relevant offence” means an offence specified in Schedule 4, if the table in that Schedule indicates that a fixed monetary penalty may be imposed.

(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, a fixed monetary penalty may be imposed if the second 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.

Specified amount

3.—(1) The amount of a fixed monetary penalty in relation to a relevant offence is—

- (a) £300 if the fifth column of the table in Schedule 4 indicates that the level of penalty is “LOW” for that offence;
- (b) £600 if the fifth column of the table in Schedule 4 indicates that the level of penalty is “MEDIUM” for that offence; or
- (c) £1000 if the fifth column of the table in Schedule 4 indicates that the level of penalty is “HIGH” for that offence.

(2) Where an offence is a relevant offence by virtue of paragraph 2(2), the amount of the fixed penalty is the same as the amount indicated in the table in Schedule 4 in relation to the principal offence (within the meaning of that paragraph).

Notice of intent

4.—(1) Where SEPA proposes to impose a fixed monetary penalty on a person, it must serve on the person a notice of what is proposed (a “notice of intent”).

(2) The notice of intent must include information as to—

- (a) the grounds for the proposal to impose the fixed monetary penalty;

- (b) the amount of the penalty;
- (c) the right to make written representations; and
- (d) the period within which written representations may be made.

Right to make written representations

5.—(1) A person on whom a notice of intent is served may, within 28 days beginning with the day on which the notice was served, make written representations to SEPA in relation to the proposed imposition of the fixed monetary penalty.

(2) Written representations may in particular include representations that the person would not, by reason of any defence, be liable to be convicted of the offence to which the penalty relates.

(3) The period mentioned in sub-paragraph (1) may be extended by agreement in writing between SEPA and the person on whom the notice was served.

Decision to impose fixed monetary penalty

6.—(1) SEPA must, after the end of the period for making representations, decide whether to impose a fixed monetary penalty.

(2) In making that decision, SEPA must have regard to any representations made in accordance with paragraph 5.

Final notice

7.—(1) Where a decision is taken to impose a fixed monetary penalty, SEPA may do so by serving a final notice.

(2) A final notice must include information as to—

- (a) the grounds for imposing the penalty;
- (b) how payment may be made;
- (c) the period within which payment must be made;
- (d) late payment penalties;
- (e) rights of appeal; and
- (f) the consequences of non-payment.

(3) SEPA may not serve a final notice after a period of six months beginning with the day which is the final day on which written representations may be made in relation to the notice of intent.

(4) The period mentioned in sub-paragraph (3) may be extended by agreement in writing between SEPA and the person on whom the notice was served.

Appeals against a fixed monetary penalty

8.—(1) A person on whom a fixed monetary penalty is imposed may appeal against the decision of SEPA to impose it.

(2) The appeal 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) The grounds on which a person may appeal under this paragraph do not include the ground that SEPA failed to comply with guidance issued to it by the Lord Advocate under section 31(1) of the Act.

(4) An appeal under this paragraph must be made within the period of 28 days beginning with the day on which the final notice under paragraph 7(1) was served.

(5) Where an appeal is made under this paragraph, the fixed monetary penalty is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.

Payment requirements

9.—(1) Subject to sub-paragraph (2), the fixed monetary penalty must be paid within 56 days beginning with the day the final notice was served.

(2) In the case of an appeal, any penalty which falls to be paid (whether because the penalty was upheld or because the appeal was withdrawn) is payable within—

(a) the period referred to in sub-paragraph (1); or

(b) the period of 28 days beginning with the day the appeal is determined or withdrawn, whichever ends later.

Late payment penalties

10.—(1) If a person fails to pay a fixed monetary penalty in full by the payment date the amount payable is increased by 40% (the “late payment penalty”).

(2) “the payment date” means the date payment is due in accordance with paragraph 9(1) or, in the case of an appeal, paragraph 9(2).

Fixed monetary penalties: effect on criminal proceedings etc.

11.—(1) Where a notice of intent relating to a fixed monetary penalty is served on a person in respect of an offence constituted by an act or omission, the period mentioned in sub-paragraph (2) is not to be counted in calculating any period within which criminal proceedings in respect of that offence constituted by that act or omission must be commenced.

(2) The period is that beginning with the day on which the notice of intent is served and ending with the day which is the final day on which written representations may be made in relation to the notice.

(3) Where a fixed monetary penalty is imposed on a person in respect of an offence constituted by an act or omission, no criminal proceedings may be commenced against the person in respect of that offence constituted by that act or omission.

(4) The reference in sub-paragraph (3) to criminal proceedings being commenced is to be read as if it includes 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(1)) being sent;

(c) a compensation offer under section 302A(2) of that Act being sent;

(d) a combined offer under section 302B(3) of that Act being sent; and

(1) 1995 c.46. Section 302 was amended by section 50(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) (“the 2007 Act”) and amended by section 70(3) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”).

(2) Section 302A was added by section 50(2) of the 2007 Act and amended by section 70(4) of the 2010 Act.

(3) Section 302B was added by section 50(2) of the 2007 Act.

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*

(e) a work order under section 302ZA(4) of that Act being made.

(4) Section 302ZA was added by section 51 of the 2007 Act and amended by section 70(5) of the 2010 Act.