



Reservoirs (Scotland) Act 2011

2011 asp 9

PART 1

RESERVOIRS

CHAPTER 9

CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES

Other civil enforcement measures

80 Fixed monetary penalties: procedure

- (1) Provision under section 79(1) must secure the results in subsection (2).
- (2) The results are that—
 - (a) where SEPA proposes to impose a fixed monetary penalty on a reservoir manager, it must give the manager a notice of what is proposed (a “notice of intent”) which complies with subsection (3),
 - (b) the notice of intent also offers the manager the opportunity to discharge the manager’s liability for the fixed monetary penalty by payment of a specified sum (which must be less than or equal to the amount of the penalty),
 - (c) if the manager does not so discharge liability—
 - (i) the manager may make written representations and objections to SEPA in relation to the proposed imposition of the fixed monetary penalty,
 - (ii) SEPA must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,
 - (d) where SEPA decides to impose the fixed monetary penalty, the notice imposing it (“the final notice”) complies with subsection (5),
 - (e) the reservoir manager on whom a fixed monetary penalty is imposed may appeal to the Scottish Ministers against the decision to impose it.
- (3) To comply with this subsection, the notice of intent must include information as to—
 - (a) the grounds for the proposal to impose the fixed monetary penalty,

Status: This is the original version (as it was originally enacted).

- (b) how payment to discharge the liability for a fixed monetary payment may be made,
 - (c) the effect of payment of the sum referred to in subsection (2)(b),
 - (d) the right to make written representations and objections,
 - (e) the circumstances in which SEPA may not impose the fixed monetary penalty,
 - (f) the period within which liability for the fixed monetary penalty may be discharged, which must not exceed the period of 28 days beginning with the day on which the notice of intent was given,
 - (g) the period within which representations and objections may be made, which must not exceed that period of 28 days.
- (4) Provision to secure the result in subsection (2)(c)(ii)—
- (a) must secure that SEPA may not decide to impose a fixed monetary penalty on a reservoir manager where it is satisfied that the manager would not, by reason of any defence, be liable to be convicted of the offence in relation to which it was imposed,
 - (b) may include provision for other circumstances in which SEPA may not decide to impose a fixed monetary penalty.
- (5) To comply with this subsection the 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) any early payment discounts or late payment penalties,
 - (e) rights of appeal,
 - (f) the consequences of non-payment.
- (6) Provision to secure the result in subsection (2)(e) must secure that the grounds on which a reservoir manager may appeal against a decision of SEPA include that—
- (a) the decision was based on an error of fact,
 - (b) the decision was wrong in law,
 - (c) the decision was unreasonable.
- (7) Provision to secure the result in that subsection may include provision about the determining by or under the order of a fee, and the charging of any fee so determined, in connection with an appeal and may require the return of a fee paid in relation to an appeal which is upheld.