



Reservoirs (Scotland) Act 2011

2011 asp 9

PART 1

RESERVOIRS

CHAPTER 9

CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES

Other civil enforcement measures

85 Further enforcement measures: enforcement

- (1) Provision under section 82(1) may include provision for a reservoir manager to pay a monetary penalty (a “non-compliance penalty”) to SEPA if the manager fails to comply with any of the following—
 - (a) a restraint notice or restoration notice imposed on the manager,
 - (b) an undertaking referred to in section 83(5).
- (2) Provision pursuant to subsection (1) may—
 - (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,
 - (d) provide for the amount to be determined in any other way,but may not specify an amount which exceeds, or make provision under which the amount may be calculated or determined so as to exceed, the maximum fine for which a person convicted of the offence concerned may be made liable on summary conviction.
- (3) Provision pursuant to subsection (1) must secure that—
 - (a) the non-compliance penalty is imposed by notice given by SEPA,
 - (b) the reservoir manager on whom it is imposed may appeal to the Scottish Ministers against the notice.

Status: This is the original version (as it was originally enacted).

- (4) Provision pursuant to subsection (3)(b) must secure that the grounds on which a reservoir manager may appeal against a notice referred to in that subsection include the following—
- (a) that the decision to give the notice was based on an error of fact,
 - (b) that the decision was wrong in law,
 - (c) that the decision was unfair or unreasonable for any reason (including, in a case where the amount of the non-compliance penalty was determined by SEPA, that the amount was unreasonable).
- (5) An order under section 82(1) may provide that where a reservoir manager on whom a non-compliance penalty is imposed does not pay the penalty, the penalty is recoverable as if it were payable under an extract decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.