

# Policy for communicating penalties and undertakings

(Revised)

March 2022

## Purpose of this document

This document explains our approach to publishing information about penalties which have been issued by us and undertakings which have been accepted by us.

It aims to make clear:

- what information we will publish;
- when we will publish that information;
- where we will publish that information;
- in which circumstances and how we might publicise penalties and undertakings.

We also set out the situations when information will not or might not be published by us.

This document relates to:

- penalties<sup>1</sup> which have been issued by us, costs recovery notices issued by us, and undertakings<sup>2</sup> which have been accepted by us under the Environmental Regulation (Enforcement Measures)(Scotland) Order 2015;
- civil penalties under the Greenhouse Gas Emissions Trading Scheme Regulations 2012 and the Greenhouse Gas Emissions Trading Scheme Order 2020 (ETS)<sup>3</sup>, the Energy Savings Opportunities Scheme Regulations 2014 (ESOS)<sup>4</sup>, the Fluorinated Greenhouse Gases Regulations 2015 (F-GAS)<sup>5</sup> and The Air Navigation (Carbon Offsetting and Reduction Scheme for International Aviation) Order 2021 (CORSIA) (together “the Climate Change Civil Penalties”).
- fixed penalty notices under the [Transfrontier Shipment of Waste Regulations 2007](http://www.sepa.org.uk/regulations/waste/transfrontier-shipment-of-waste/).<sup>6</sup>

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<sup>1</sup> Fixed monetary penalties, variable monetary penalties, and non-compliance penalties

<sup>2</sup> Enforcement undertakings and variable monetary penalty undertakings

<sup>3</sup> <http://www.sepa.org.uk/regulations/climate-change/eu-emissions-trading-system/>

<sup>4</sup> <http://www.sepa.org.uk/regulations/climate-change/energy-savings-opportunities-scheme/>

<sup>5</sup> <http://www.sepa.org.uk/regulations/climate-change/fgases-and-ods/>

<sup>6</sup> <http://www.sepa.org.uk/regulations/waste/transfrontier-shipment-of-waste/>

## Background: Publication

Enforcement action is a key part of our [Regulatory Strategy](#) and allows us to improve compliance levels, tackle environmental crime and drive behaviours in a positive direction. We want our enforcement activities to deter and discourage offenders and for these to be fairly, consistently and proportionately applied alongside our other regulatory work, including audits, inspections and monitoring activities.

The courses of enforcement action available are now broad and span serious offending that will continue to be reported by us for consideration for prosecution by the Crown Office and Procurator Fiscal Service and lower-level offences that we will deal with directly, via new enforcement measures intended to address non-compliant activity and poor performance.

This policy complements our [Enforcement Policy](#) and explains what we will do to communicate penalties and undertakings.

We are required under the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 (the Order) to publish 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 the number and type of cases in which a variable monetary penalty undertaking (VMP undertaking), or enforcement undertaking has been accepted by us.

We have also been given the discretion by the Order to publish, in such manner as we think fit:

- final fixed monetary penalty notices imposed by us;
- final variable monetary penalty notices imposed by us;
- non-compliance penalty notices imposed by us;
- VMP undertakings accepted by us;

- enforcement undertakings accepted by us.

We are also required to publish some information about some civil penalties under the [ETS](#)<sup>7</sup>, [F-GAS](#)<sup>8</sup> and [ESOS](#)<sup>9</sup>.

We have undertaken, in terms of our [Guidance on the use of enforcement action](#), to publish information about fixed monetary penalties, variable monetary penalties and non-compliance penalties issued and undertakings accepted by us.

We may also, in terms of that guidance, publicise the use of particular enforcement actions in other ways when we consider it appropriate to secure one or more of our enforcement outcomes – to achieve the behaviour change that will effectively protect and, where possible, improve the environment, secure the well-being of people in Scotland and contribute to the sustainable use of resources.

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<sup>7</sup> <http://www.sepa.org.uk/regulations/climate-change/eu-emissions-trading-system/>

<sup>8</sup> <http://www.sepa.org.uk/regulations/climate-change/fgases-and-ods/>

<sup>9</sup> <http://www.sepa.org.uk/regulations/climate-change/energy-savings-opportunities-scheme/>

## Summary: what information will we publish

Type of enforcement action	What will be published	How it will appear on the SEPA website
Fixed monetary penalties (including fixed penalties issued by us under the Transfrontier Shipment of Waste Regulations 2007)	Number of penalties, type of cases and total amount of penalties	Details on SEPA's enforcement penalty web page
	Name/partial address*, date penalty issued, details of offence, and penalty amount	Details included in table of penalties on SEPA enforcement penalty web page
	All notices issued*	Link from table of penalties
Climate Change Civil Penalties	Number of penalties, type of cases and total amount of penalties	UK Emissions trading scheme web page
Climate Change Civil Penalties (excluding civil penalties for breaches of emissions targets by operators of hospital and small emitter (HSE) installations under ETS)	Name/partial address*, date penalty issued, details of the failure resulting in penalty, and penalty amount	UK Emissions trading scheme web page
	All notices issued (except for civil penalties under ETS)*	UK Emissions trading scheme web page
Variable monetary penalties (VMP)	Number of penalties, type of cases and total amount of penalties	Details on SEPA's enforcement penalty web page
	Name/partial address*, date penalty issued, details of offence, and penalty amount	Details included in table of penalties on SEPA enforcement penalty web page
	All final notices*	Link from table of penalties

VMP undertakings	Number of undertakings and type of cases	Details on SEPA's enforcement penalty web page
	Name/partial address*, date undertaking accepted, and details of offence	Details included in table of penalties on SEPA enforcement penalty web page
	Copies of all undertakings accepted (offer, acceptance and any related correspondence or notices)*	Link from table of undertakings
Enforcement Undertakings	Number of undertakings and type of cases	Details on SEPA's enforcement penalty web page
	Name/address**, date undertaking accepted, details of offence, and any non-compliance certificates issued	Details included in table of undertakings on SEPA enforcement penalty web page
	Copies of all undertakings accepted (offer, acceptance and any related correspondence or notices)**	Link from table of undertakings
Non-compliance penalties	Number of penalties, type of cases and total amount of penalties	Details on SEPA's enforcement penalty web page
	Name/partial address*, date penalty issued, details of offence, and penalty amount	Details included in table of undertakings on SEPA enforcement penalty web page
	All penalty notices*	Link from table of penalties
Costs recovery notices	Number of notices, type of cases and total amount of costs	Enforcement web pages
	Name/partial address**, date notice issued, and amount of the costs required to be paid	Table of costs recovery notices

\*For penalties issued after 1 March 2022, names and partial addresses of individuals will be included for fixed monetary penalties and variable monetary penalties (including variable monetary penalty undertakings and non-compliance penalties). For Climate Change Civil Penalties, addresses of individuals will not be included.

\*\*Names and addresses of individuals will not be included

## Publication: what information we will and won't publish

### Tables of penalties, costs recovery notices and undertakings

The following will be published on our website:

- A table of penalties imposed or issued by us which will include, for each fixed monetary penalty notice (including fixed penalty notices under the Transfrontier Shipment of Waste Regulations 2007), variable monetary penalty notice, Climate Change Civil Penalty notice, or non-compliance penalty notice, the name and partial address of the person on whom the penalty was imposed (except for addresses of individuals issued a Climate Change Civil Penalty), the date the penalty notice was issued, the offence or failure to which the penalty relates, and the amount of the penalty.
- A table of costs recovery notices issued by us which will include, for each notice, the name and partial address of the person on whom the notice was issued (except for names and addresses of individuals and partnerships containing personal data), the date the costs recovery notice was issued, and the amount of the costs required to be paid.
- A table of VMP undertakings accepted by us which will include, for each undertaking, the name and partial address of the person who has given the undertaking, the date the undertaking was accepted and the details of the offence to which the undertaking relates.
- A table of enforcement undertakings accepted by us which will include, for each undertaking, the name and address of the person who has given the undertaking (except for names and addresses of individuals and partnership details containing personal data), the date the undertaking was accepted and the details of the offence to which the undertaking relates. If any non-compliance certificates are issued in relation to enforcement undertakings, we will include them in the table.

We will **not** publish:



- information about any notice of intent or initial notice issued in relation to a fixed monetary penalty, a variable monetary penalty or Climate Change Civil Penalty;
- information about VMP undertakings and enforcement undertakings that have been offered but **not** accepted by us;
- names and addresses of individuals and partnership details containing personal data for enforcement undertakings and costs recovery notices, and addresses relating to individuals for Climate Change Civil Penalty notices;
- cases which have been overturned on appeal.

### **When we will publish the tables**

We will publish the tables and information referred to above on our website:

- within a reasonable time after the period for making an appeal has expired in relation to a penalty notice or costs recovery notice or non-compliance penalty or if an appeal has been made, when that appeal has been withdrawn or determined (and liability for the penalty/costs confirmed);
- within a reasonable time after an undertaking has been accepted or a non-compliance certificate is issued (or, if an appeal has been made, after that appeal is withdrawn or determined).

### **When we will remove information after publication**

We will ensure that information is removed from these tables six years after first publication. We will not otherwise remove details from these tables when they are updated, unless required by law or the penalty is subsequently modified or withdrawn. For example, for ESOS penalties which include a publication penalty, the statutory period for publication cannot exceed one year unless SEPA decides to publish the penalty for longer on the basis that the seriousness of the failure justifies a longer period.

If, for any reason, we withdraw a penalty notice after it has been imposed, we will remove details of that penalty notice from these tables, and any links to those notices.

After the information in these tables is removed, we will continue to publish an annual summary of the number of penalties, type of cases and total amount of penalties for each year based on that information.

## **Enforcement undertakings**

In addition to publishing details of enforcement undertakings in the table of undertakings, we will publish for no longer than six years after first publication:

- the enforcement undertakings themselves (i.e. once accepted by us, the offer and our acceptance letter) and any subsequent amendments accepted by us and related correspondence or notices (including confirmation of compliance);
- any non-compliance certificates associated with these enforcement undertakings but only after the period for making an appeal has expired in relation to that certificate, or if an appeal has been made, when that appeal has been withdrawn or determined.

The above information will be made available through links on the published table of undertakings on our website.

We will **not** publish:

- enforcement undertakings which have **not** been accepted by us;
- the personal names and addresses, signatures, personal telephone numbers and personal e-mail addresses in relation to enforcement undertakings.

## **Monetary penalties and associated penalty notices/undertakings**

In addition to publishing details in the table of penalties/undertakings, we will publish for no longer than six years after first publication copies of all:

- final fixed and variable monetary penalty notices (but not including any cover letter or calculation that accompanies the notice) imposed by us;
- Climate Change Civil Penalty notices issued by us (except for civil penalties under ETS);
- non-compliance penalty notices issued by us;

- VMP undertakings accepted by us (i.e. once accepted by us, the offer and our acceptance letter) and any subsequent amendments accepted by us and related correspondence or notices (including confirmation of compliance).

We will publish:

- the name and partial address of anybody who has been issued with a fixed or variable monetary penalty by us or who has offered a VMP undertaking accepted by us;
- information associated with any notice but only after the period for making an appeal has expired in relation to such a penalty notice or, if an appeal has been made, when that appeal has been withdrawn or determined (and liability to the penalty has been confirmed).

Again, this information will be made available through links on the published tables of penalties and undertakings on our website.

We will **not** publish:

- the full addresses, signatures, personal telephone numbers and personal e-mail addresses from notices and undertakings that we intend to publish;
- VMP undertakings that have been offered but not accepted by us;
- civil penalty notices under ETS.

## **Publication: when we might not publish information**

Except for the information we are required to publish as set out above, where there are compelling reasons (such as where disclosure may prejudice an ongoing investigation) we may decide not to publish information regarding the penalties imposed by us or undertakings accepted by us or non-compliance certificates issued by us.

There may also be circumstances where what does or does not go on the [public register](#) may be subject to Ministerial directions. We will therefore ensure that we keep within the spirit of, for example, national security directions and do not publish information where this is to be specifically excluded from our public registers.

## **Informing the public and wider interests of the outcomes of our enforcement actions**

We know that the reputational impacts of negative media attention following a successful prosecution or imposition of a penalty can be very significant. Our position is clear in that full compliance is a non-negotiable part of our Regulatory Strategy - we want and expect behaviours that will deliver this and will use publicity as part of our overall approach.

The purpose of enforcement action is to deter and discourage non-compliant and illegal practices and for the fines or penalties imposed to punish offenders. Enforcement is also integral to us being able to deliver on our statutory purpose to protect the environment whilst having regard to the well-being of people in Scotland and sustainable use of natural resources.

We will continue to publish information about how many cases we report to the Crown Office and Procurator Fiscal Service and the number of convictions arising in the criminal courts, including when a Publicity Order has been made by the court.

We will do this via our website and may also publicise:

- penalties and undertakings in such a way as to be fair and proportionate whilst not shying away from drawing attention to non-compliance and environmental harm caused by poor performance and non-compliant activity.

We may decide to publicise:

- a Climate Change Civil Penalty issued by us, for example, where the same person has previously been issued with a Climate Change Civil Penalty.

To publicise a penalty or undertaking (or non-compliance certificate), we will consider:

- putting a statement on our website or our media centre;
- issuing a press release;
- making a statement on our social media channels.

For information on accessing this document in an alternative format or language please either contact SEPA by emailing to [equalities@sepa.org.uk](mailto:equalities@sepa.org.uk)

If you are a user of British Sign Language (BSL) the Contact Scotland BSL service gives you access to an online interpreter enabling you to communicate with us using sign language.

<http://contactscotland-bsl.org/>