

# Environmental Enforcement - Scotland



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## Environmental Enforcement in Scotland: How it works now

- SEPA has a limited range of enforcement tools to deal with environmental offending
- SEPA is able to report serious or persistent cases to the Crown Office and Procurator Fiscal Service (COPFS)
- COPFS prosecute cases in the public interest
- The Lord Advocate is the head of the prosecution system in Scotland.

# New Environmental Enforcement Framework for Scotland

## Enforcement Order, Lord Advocate Guidelines and SEPA Enforcement Policy and Guidance

- COPFS prosecuting cases in the public interest
- Strengthened court sentencing powers
- SEPA continues to refer significant cases to Procurator Fiscal
- New measures to deal with the range of lower level offending:
  - **Enforcement undertakings (voluntary)**
  - **Variable monetary penalties**
  - **Fixed penalties**

# (Civil) Enforcement Measures

- Timing
- Key differences with E&W
- Challenges for implementation

# Timing

- Spring/Summer 2014
  - New statutory purpose (s20A EA95)
  - Extended Section 108 Powers
  - New Significant Environmental Harm Offence
- Winter 2014
  - Additional Sentencing Powers for Courts
  - Vicarious Liability
  - Relevant Offences Order
- Spring/Summer 2015
  - Enforcement Measures **Order**, incl Relevant Offences
- Autumn 2015
  - SEPA **Guidance** on use of enforcement measures
- Winter 2015
  - **Implementation** of enforcement measures

# Key differences with E&W

- Scottish criminal justice system and the Lord Advocate's Guidelines
- Burden of proof
- Wide range of relevant offences
- Higher fixed penalty levels
- Lower VMP maximum
- VMP Undertakings
- Enforcement Undertakings and certificate of non-compliance
- Appeals forum

# Context

- 97 cases referred to PF over the last 3 years
- 310 statutory notices over the last 3 years
- 47 cases resulted in fines totalling £493,110
- 65 convictions (60 guilty pleas, 5 found guilty)

# Scottish criminal justice system and the Lord Advocate's Guidelines





# Burden of proof



# Wide range of relevant offences

- Fixed Monetary Penalties
- Variable Monetary Penalties
- Enforcement Undertakings
- **About 160 different offences**  
E.g.
  - Waste offences (EPA90)
  - Water offences (CAR)
  - IED/PPC offences (PPC Regs)
  - RSA offences (RSA93)
  - Reservoir Safety offences
  - Producer responsibility offences

# Penalty levels

- Higher fixed penalty levels
  - £300, £600, £1000
- Lower VMP maximum
  - Maximum available on summary conviction
  - Or £40,000



# Appeals: Scottish Land Court



# Implementation: Challenges

- Timing
- The Nature of Environmental Offences
- Partnership working
- New appeals forum

# Timing

- All happening at once: FMPs, VMPs, EUs and for all offences



# Nature of Environmental Offences

- No clear dividing line between criminal offences that are for criminal courts and administrative offences for regulator – same broad offences
- Some offending criminal, some regulatory/administrative, but same offences
- Examples