



# Marine (Scotland) Act 2010

## 2010 asp 5

### PART 4

#### MARINE LICENSING

##### *Civil sanctions*

#### **46 Fixed monetary penalties**

- (1) The Scottish Ministers may by order make provision about the imposition of fixed monetary penalties on persons in relation to offences under this Part.
- (2) Provision under subsection (1) must provide that—
  - (a) fixed monetary penalties may only be imposed where the Scottish Ministers are satisfied beyond reasonable doubt that a person has committed an offence under this Part,
  - (b) fixed monetary penalties are to be imposed by notice,
  - (c) the amount of the penalty which can be imposed in relation to an offence may not exceed the maximum amount of the fine that may be imposed on summary conviction for that offence.
- (3) For the purpose of this Part, a “fixed monetary penalty” is a requirement to pay to the Scottish Ministers a penalty of a specified amount.
- (4) For the purposes of this section “specified” means specified in an order made under this section.

#### **47 Fixed monetary penalties: procedure**

- (1) Provision under section 46(1) must secure the results in subsection (2).
- (2) The results are that—
  - (a) where the Scottish Ministers propose to impose a fixed monetary penalty on a person, they must serve on the person a notice of what is proposed (a “notice of intent”) which complies with subsection (3),

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- (b) the notice of intent also offers the person the opportunity to discharge the person'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 person does not so discharge liability—
    - (i) the person may make written representations and objections to the Scottish Ministers in relation to the proposed imposition of the fixed monetary penalty, and
    - (ii) the Scottish Ministers must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,
  - (d) where the Scottish Ministers decide to impose the fixed monetary penalty, the notice imposing it ("the final notice") complies with subsection (5), and
  - (e) the person on whom a fixed monetary penalty is imposed may appeal to the sheriff 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,
  - (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 representations and objections,
  - (e) the circumstances in which the Scottish Ministers may not impose the fixed monetary penalty,
  - (f) the period within which liability to 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 received, and
  - (g) the period within which representations and objections may be made, which must not exceed the period of 28 days beginning with the day on which the notice of intent was received.
- (4) Provision to secure the result in subsection (2)(c)(ii)—
- (a) must secure that the Scottish Ministers may not decide to impose a fixed monetary penalty on a person where they are satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence in relation to which the penalty is proposed to be imposed, and
  - (b) may include provision for other circumstances in which the Scottish Ministers 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) the early payment discounts or late payment penalties,
  - (e) rights of appeal, and
  - (f) the consequences of non-payment.
- (6) Provision to secure the result in subsection (2)(e) must secure that the grounds on which a person may appeal against a decision of the Scottish Ministers 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) In this section “specified” means specified in an order made under section 46.

#### **48 Variable monetary penalties**

(1) The Scottish Ministers may by order make provision about the imposition of variable monetary penalties on persons in relation to offences under this Part.

(2) Provision under subsection (1) must provide that—

(a) variable monetary penalties may only be imposed where the Scottish Ministers are satisfied beyond reasonable doubt that a person has committed an offence under this Part,

(b) variable monetary penalties are to be imposed by notice.

(3) For the purposes of this Part a “variable monetary penalty” is a penalty of such amount as the Scottish Ministers may in each case determine.

#### **49 Variable monetary penalties: procedure**

(1) Provision under section 48 must secure the results in subsection (2).

(2) The results are that—

(a) where the Scottish Ministers propose to impose a variable monetary penalty on a person, they must serve on the person a notice (a “notice of intent”) which complies with subsection (3),

(b) the person may make written representations and objections to the Scottish Ministers in relation to the proposed imposition of the penalty,

(c) after the end of the period for making such representations and objections the Scottish Ministers must decide whether to impose a penalty and, if so, the amount of the penalty,

(d) where the Scottish Ministers decide to impose a penalty, the notice imposing it (the “final notice”) complies with subsection (6), and

(e) the person on whom a penalty is imposed may appeal to the sheriff against the decision as to the imposition or amount of the penalty.

(3) To comply with this subsection the notice of intent must include information as to—

(a) the grounds for the proposal to impose the penalty,

(b) the right to make representations and objections,

(c) the circumstances in which the Scottish Ministers may not impose the penalty, and

(d) the period within which representations and objections may be made, which may not be less than the period of 28 days beginning with the day on which the notice of intent is received.

(4) Provision to secure the result in subsection (2)(c)—

(a) must secure that the Scottish Ministers may not decide to impose a penalty on a person where they are satisfied that the person would not, by reason of any defence raised by that person, be liable to be convicted of the offence in question, and

(b) may include provision for other circumstances in which the Scottish Ministers may not decide to impose a penalty.

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- (5) Provision to secure the result in subsection (2)(c) must also include provision for—
- (a) the person on whom the notice of intent is served to be able to offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any person affected by the offence,
  - (b) the Scottish Ministers to be able to accept or reject such an undertaking, and
  - (c) the Scottish Ministers to take any undertaking so accepted into account in their decision.
- (6) 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 the payment must be made,
  - (d) any early payment discounts or late payment penalties,
  - (e) rights of appeal, and
  - (f) the consequences of non-payment.
- (7) Provision to secure the result in subsection (2)(e) must secure that the grounds on which a person may appeal against a decision of the Scottish Ministers include that—
- (a) the decision was based on an error of fact,
  - (b) the decision was wrong in law,
  - (c) the amount of the penalty is unreasonable,
  - (d) the decision was unreasonable for any other reason.

## **50 Further provision about civil sanctions**

Schedule 2 makes further provision about civil sanctions under this Part.