



Marine (Scotland) Act 2010

2010 asp 5

PART 4

MARINE LICENSING

Offences

39 Breach of requirement for, or conditions of, licence

- (1) A person who—
 - (a) contravenes section 20(1), or
 - (b) fails to comply with any condition of a marine licence, commits an offence.
- (2) A person who is bound by a condition of a licence by virtue of section 29(5) is not to be taken as having failed to comply with the condition unless the requirements of subsection (3) are satisfied.
- (3) The requirements are that—
 - (a) the Scottish Ministers have served the person with a notice under this subsection which specifies the condition together with a period (which must be a reasonable period, in all the circumstances of the case) within which the person must comply with the condition,
 - (b) the person has failed to comply with the condition within that period.
- (4) A person guilty of an offence under subsection (1) is liable—
 - (a) on summary conviction, to a fine not exceeding £50,000,
 - (b) on conviction on indictment, to a fine or to imprisonment for a period not exceeding 2 years, or to both.

Modifications etc. (not altering text)

- C1** Ss. 39-42 applied (9.11.2020) by [The Marine Licensing \(Exempted Activities\) \(Scottish Inshore Region\) Amendment Order 2020 \(S.S.I. 2020/316\)](#), arts. 1, **12**

Changes to legislation: There are currently no known outstanding effects for the Marine (Scotland) Act 2010, Cross Heading: Offences. (See end of Document for details)

Commencement Information

I1 S. 39 in force at 6.4.2011 by [S.S.I. 2011/58](#), [art. 3\(a\)](#)

40 Defences: action taken in an emergency

- (1) It is a defence for a person charged with an offence under section 39(1) in relation to any activity to prove that—
- (a) the activity was carried out for the purpose of saving life, or for the purpose of securing the safety of a vessel, aircraft or marine structure, and
 - (b) the person took steps within a reasonable time to inform the Scottish Ministers of the matters set out in subsection (2).
- (2) The matters are—
- (a) the fact that the activity was carried out,
 - (b) the locality and circumstances in which it was carried out, and
 - (c) any substances or objects concerned.
- (3) The defence provided by subsection (1) is not available to a person where—
- (a) the court is not satisfied that the activity either—
 - (i) was necessary for any of the purposes mentioned in subsection (1) (a), or
 - (ii) was a reasonable step to take in the circumstances, or
 - (b) the necessity for the activity was due to the fault of the accused or a person acting under the accused's direction or control.

Modifications etc. (not altering text)

C2 Ss. 39-42 applied (9.11.2020) by [The Marine Licensing \(Exempted Activities\) \(Scottish Inshore Region\) Amendment Order 2020 \(S.S.I. 2020/316\)](#), [arts. 1, 12](#)

Commencement Information

I2 S. 40 in force at 6.4.2011 by [S.S.I. 2011/58](#), [art. 3\(a\)](#)

41 Defences: electronic communications: emergency works

- (1) It is a defence for a person charged with an offence under section 39(1) in relation to any activity to prove that—
- (a) for the purposes of [^{F1}Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)] (undertaker's works), the person is the operator or a relevant undertaker, and
 - (b) the activity was carried out for the purpose of executing emergency works, within the meaning of that code.

^{F2}(2)

Textual Amendments

F1 Words in [s. 41\(1\)](#) substituted (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), [s. 118\(6\)](#), [Sch. 3 para. 57\(2\)](#); [S.I. 2017/1286](#), [reg. 2\(d\)](#)

Changes to legislation: There are currently no known outstanding effects for the Marine (Scotland) Act 2010, Cross Heading: Offences. (See end of Document for details)

F2 S. 41(2) omitted (28.12.2017) by virtue of [Digital Economy Act 2017 \(c. 30\), s. 118\(6\), Sch. 3 para. 57\(3\)](#); S.I. 2017/1286, reg. 2(d)

Modifications etc. (not altering text)

C3 Ss. 39-42 applied (9.11.2020) by [The Marine Licensing \(Exempted Activities\) \(Scottish Inshore Region\) Amendment Order 2020 \(S.S.I. 2020/316\)](#), arts. 1, **12**

Commencement Information

I3 S. 41 in force at 6.4.2011 by [S.S.I. 2011/58](#), **art. 3(a)**

42 Offences relating to information

- (1) A person who, for any of the purposes set out in subsection (2)—
- (a) makes a statement which is false or misleading in a material way, knowing the statement to be false or misleading,
 - (b) makes a statement which is false or misleading in a material way, being reckless as to whether the statement is false or misleading, or
 - (c) intentionally fails to disclose any material information,
- commits an offence.
- (2) The purposes are—
- (a) the purpose of procuring the issue, variation or transfer of a marine licence,
 - (b) the purpose of complying with, or purporting to comply with, any obligation imposed by the provisions of this Part or the provisions of a marine licence.
- (3) A person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to a fine.

Modifications etc. (not altering text)

C4 Ss. 39-42 applied (9.11.2020) by [The Marine Licensing \(Exempted Activities\) \(Scottish Inshore Region\) Amendment Order 2020 \(S.S.I. 2020/316\)](#), arts. 1, **12**

Commencement Information

I4 S. 42 in force at 6.4.2011 by [S.S.I. 2011/58](#), **art. 3(a)**

Changes to legislation:

There are currently no known outstanding effects for the Marine (Scotland) Act 2010, Cross
Heading: Offences.