



# 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.

#### **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

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*Status: This is the original version (as it was originally enacted).*

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- (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.

#### **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 paragraph 23 of 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.

(2) In this section “the electronic communications code” means the code set out in Schedule 2 to the Telecommunications Act 1984 (c.12).

#### **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.