

MARINE AND COASTAL ACCESS ACT 2009

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

Part 4: Marine Licensing

Chapter 3: Enforcement

Offences

Section 85: Breach of requirement for, or conditions of, a licence

268. It is an offence for a person to carry out a licensable activity (as defined in section 66) without a licence or to do so in a manner that breaches any conditions of a licence.
269. With regard to the construction, alteration or improvement of any works, any person who owns, occupies or enjoys the use of the works and is, by virtue of section 71(5), bound by specified conditions in a licence is not to be taken to have committed an offence unless the enforcement authority has served a notice on the person identifying the particular condition and specifying a period within which the condition must be complied with, and the person fails to comply with the condition within that period.
270. *Subsection (4)* states the penalties for committing any such offence.

Section 86: Action taken in an emergency

271. If a person undertakes a licensable activity without a licence but does so for the purpose of securing the safety of a vessel, aircraft or structure, or for the purpose of saving life, the person has a defence against a charge under section 85(1). However, this is dependent on the person informing the licensing authority within a reasonable time of the matters specified in *subsection (2)*; on the steps taken being necessary and reasonable; and on it not being the person's fault that the emergency occurred.

Section 87: Electronic communications: emergency works

272. The scope of emergency works under the Electronic Communications Code (Schedule 2 to the Telecommunications Act 1984) ("the Code") is broader than the defence provided by section 86 of the Act. For example, emergency works under the Code include works to put right any interruption in service provided by an operator's system. This section therefore provides a defence against any charge brought under section 85(1) of the Act where the activity in question is carried out by an operator or relevant undertaker, within paragraph 23 of the Code, for the purpose of executing emergency works, within the meaning of the Code.

Section 88: Activity licensed by another State

273. There is a further defence to the undertaking of certain activities without a licence. The activities are those mentioned in *subsection (2)* – namely the depositing or incineration of any substance or object, or the scuttling of a vessel or floating container, from a

British vessel, aircraft or structure, in non-UK waters. For the defence to be applicable, the vessel, aircraft or structure must have either been loaded (in the case of making a deposit or incineration), or started its journey (in the case of scuttling) in a State that is party to the international Conventions identified in *subsection (5)*. Under *subsection (4)* the activity must also have been undertaken in pursuance of, and in accordance with, a licence issued by the appropriate authority in that State.

274. The Secretary of State may amend *subsections (5) and (6)* to give effect to any international agreement which alters or replaces any Convention or Protocol mentioned in those subsections.

Section 89: Information

275. It is an offence for a person who is applying for a new licence, or for the variation or transfer of an existing licence or who, in complying, or purporting to comply, with obligations imposed either by this Part or a licence, knowingly or recklessly supplies false or misleading information, or intentionally fails to disclose any material particular. Penalties set out in *subsection (3)* apply if an offence has been committed.

Enforcement notices

Section 90: Compliance notice

276. A person carrying on a licensed activity in a manner that breaches the conditions of the licence may be issued with a notice requiring compliance. Such a notice is called a compliance notice.
277. An enforcement authority, as defined in section 114, may issue a compliance notice in all circumstances where licence conditions have been breached, except where serious harm to either the environment or human health has occurred or is likely to occur, or where the activity has seriously interfered, or is likely seriously to interfere with, legitimate uses of the sea. A compliance notice may be served, for example, in case of a technical breach. The enforcement authority will be able to use other enforcement tools available to it, such as a stop notice or an emergency safety notice, where the breach has led to serious harm or serious interference.
278. A compliance notice must state the enforcement authority's reasons for issuing the notice, the steps which the enforcement authority requires to be taken, and the period within which any steps required should be completed.

Section 91: Remediation notice

279. A person who has carried on or is in the process of carrying on a licensable activity, either without a licence or with a licence but in a manner that breaches the conditions of the licence and who has caused, is causing or is likely to cause any of the results described in *subsection (5)*, may be issued with a remediation notice. This is a notice requiring the person to take "remedial or compensatory steps" (described in more detail below) or to pay a sum representing the cost of taking such steps.
280. The enforcement authority may issue a remediation notice in cases where harm to the environment or human health has occurred, is occurring, or is likely to occur, or where the activity has interfered is interfering or is likely to interfere with legitimate uses of the sea.
281. The enforcement authority may only issue a remediation notice after they have consulted the person to whom they intend to issue the notice.
282. The "remedial or compensatory steps" which a remediation notice may require a person to take are steps to protect the environment or human health, or to prevent interference with legitimate uses of the sea, or to prevent, minimise, remedy or mitigate the effects of the harm or interference in question, or to restore the condition of any place affected

by the activity, or for any other purpose which the enforcement authority considers appropriate, or to pay a sum representing the cost of taking such steps. A remediation notice may require steps to be taken at a site other than the one affected by the harm or interference (see *subsection (9)(f)*). It may not be reasonably possible to restore the whole or part of a site to the condition it would have been in had the harm or interference not been caused, so steps to be taken at another site may be considered more appropriate. This could occur for instance where steps to be taken would be disproportionately expensive compared to the gain achieved or the best course of action may be to allow the site to recover naturally over time.

283. A remediation notice could be served in addition to a stop notice (see section 102). This would be the case, for example, where an enforcement authority puts an immediate halt to a damaging activity and then requires the operator to put right the damage already caused.
284. A remediation notice must state the enforcement authority's reasons for issuing the notice; any remedial or compensatory steps to be taken, or any sum to be paid in respect of the cost of taking such steps; and the period within which any such steps are to be completed or any such sum is to be paid. The requirements contained in a remediation notice must be reasonable.

Section 92: Further provision as to enforcement notices

285. All compliance and remediation notices must be in writing (see the definition of notice in section 322(1)). They must be served on the person carrying on or in control of the activity in question, and may, if a licence has been granted for that activity to another person, also be served on the licensee. Notices may be varied or revoked by the issue of a further notice.
286. It is an offence to fail to comply with a notice.

Civil sanctions

287. The fixed and variable monetary penalties and processes described in the following sections are based on those in the Regulatory and Enforcement Sanctions Act 2008.

Section 93: Fixed monetary penalties

288. This section enables the licensing authority by order to grant to the appropriate enforcement authority the power to issue a fixed monetary penalty to a person in relation to an offence under this Part.
289. The appropriate enforcement authority is defined in section 115(1).
290. The appropriate enforcement authority may impose a fixed monetary penalty only if it is satisfied beyond reasonable doubt that the person has committed the offence in question.
291. The amount of a fixed monetary penalty will be specified by the order and may not exceed the maximum fine that could be imposed on conviction of the offence in question. Different provision may be made for different cases.

Section 94: Fixed monetary penalties: procedure

292. This section specifies certain minimum requirements that the licensing authority must ensure that any fixed monetary penalty regime includes. In particular, when imposing the penalty the enforcing authority must be required to issue a notice of intent to the person setting out the information specified in *subsection (3)*, and providing the person with an opportunity to discharge the liability by payment of a prescribed sum. Alternatively a person may make representations, in accordance with *subsection (2)(c)(i)*. The authority may decide to impose a fixed monetary penalty by a "final notice"

which must contain the information specified in *subsection (5)*. A person on whom a final notice is served has a right of appeal. *Subsection (6)* states the minimum grounds for appeal that must be available.

Section 95: Variable monetary penalties

- 293. This section enables the licensing authority by order to grant to the appropriate enforcement authority the power to issue a variable monetary penalty to a person in relation to an offence under this Part.
- 294. The appropriate enforcement authority is defined in section 115(1).
- 295. The appropriate enforcement authority may impose a variable monetary penalty only when satisfied beyond reasonable doubt that the person has committed the offence.
- 296. The enforcement authority will determine the amount of the variable monetary penalty on a case-by-case basis.

Section 96: Variable monetary penalties: procedure

- 297. This section specifies certain minimum requirements that the licensing authority must ensure that any variable monetary penalty regime includes. In particular, when imposing the penalty the enforcing authority is required to issue a notice of intent to the person which must contain the information specified in *subsection (3)* and must provide the person with an opportunity to discharge the liability by making a payment or offering an undertaking (for example, remediation works or another kind of activity). Alternatively a person may make representations against the imposition of the notice. The authority may decide to impose a variable monetary penalty by a “final notice” which must contain the information specified in *subsection (6)* and the authority will take into account any representations it has received. A person on whom a final notice is served has a right of appeal. *Subsection (7)* sets out the minimum grounds for appeal that must be available.

Section 97: Further provision about civil sanctions

- 298. [Schedule 7](#) makes further provision in relation to the civil sanctions that may be imposed under this Part.