Aquaculture and Fisheries (Scotland) Act 2007

2007 asp 12

PART 4

[F1 FIXED PENALTY NOTICES]

Textual Amendments

F1 Pt. 4 title substituted (16.9.2013) by Aquaculture and Fisheries (Scotland) Act 2013 (asp 7), **ss. 60(5)**, 66(2) (with s. 65); S.S.I. 2013/249, art. 2

F2...

Textual Amendments

F2 S. 25 cross-heading repealed (16.9.2013) by Aquaculture and Fisheries (Scotland) Act 2013 (asp 7), ss. 60(6), 66(2) (with s. 65); S.S.I. 2013/249, art. 2

25 Issue of fixed penalty notices

(1) Where a [F3fixed penalty] officer has reasonable grounds for suspecting that a person has committed a relevant offence, the officer may issue the person with a fixed penalty notice.

(2) In subsection (1), a relevant offence F4...—

[F5(a) is an offence under the Sea Fisheries enactments in respect of which a person mentioned in paragraph (a) of subsection (2A) has functions,

(b) is an offence under the marine protection and nature conservation legislation in respect of which a person mentioned in paragraph (b) of that subsection has functions,

(c) is an offence under—

(i) Part 4 of the Marine (Scotland) Act 2010 (marine licensing), or

(ii) section 5(5) of the Aquaculture and Fisheries (Scotland) Act 2013 (control and monitoring of operation of wellboats),

(d) in relation to a person mentioned in any of paragraphs (c) to (f) of that subsection, is an offence in respect of which the person has functions.**]**

[[F6](2A) The persons referred to in subsection (2) are—

(a) a British sea-fishery officer,

(b) a marine enforcement officer within the meaning of section 157(1) of the Marine (Scotland) Act 2010,

(c) an inspector within the meaning of section 12 of this Act,

(d) an inspector within the meaning of regulation 3(1) of the Aquatic Animal Health (Scotland) Regulations 2009 (S.S.I. 2009/85),

(e) an inspector within the meaning of regulation 1(2) of the Animals and Animal Products (Import and Export) Regulations 2007 (S.S.I. 2007/194) who is appointed as mentioned in that regulation by the Scottish Ministers for purposes relating to fish farming or shellfish farming,

(f) an authorised officer within the meaning of regulation 2(1) of the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997 (S.I. 1997/1729) appointed (whether solely or jointly) by the Scottish Ministers to act in matters arising under those Regulations relating to fish farming or shellfish farming or the products of either such type of farming.

(2B) The Scottish Ministers may by order modify—

(a) subsection (2) so as to amend the definition of "relevant offence",

(b) subsection (2A) so as to—

(i) add or remove a description of a person to or from those for the time being listed in that subsection,

(ii) vary a description of a person for the time being listed in that subsection.

(2C) In subsection (2A)(e) and (f), " fish farming " and " shellfish farming " have the same meanings as in section 12.

(2D) Despite subsection (1), a fixed penalty officer may not issue a notice in respect of a relevant offence that involves—

(a) assault on a person mentioned in subsection (2A),

(b) obstructing such a person in the exercise of the person's powers,

(c) failure to comply with a requirement imposed, or instruction given, by such a person.**]**

(3) In this Part—

"appropriate fixed penalty" has the meaning given in section 27(2);

"British sea-fishery officer" means any person who by virtue of section 7 of the Sea Fisheries Act 1968 (c. 77) is a British sea-fishery officer;

[[F7] " fixed penalty officer " means a person appointed as such an officer by the Scottish Ministers; **]**

"period for paying" has the meaning given in section 26(4);

"notice" means a fixed penalty notice issued under subsection (1);

"Sea Fisheries enactments" means any enactments for the time being in force relating to sea fish or sea fishing, including any enactment relating to fishing for shellfish, salmon or migratory trout.

[[F8] " the marine protection and nature conservation legislation " has the meaning given in section 132(2) of the Marine (Scotland) Act 2010; **]**

Textual Amendments

F3 Words in s. 25(1) substituted (16.9.2013) by Aquaculture and Fisheries (Scotland) Act 2013 (asp 7), **ss. 60(2)(a)**, 66(2) (with s. 65); S.S.I. 2013/249, art. 2

F4 Words in s. 25(2) repealed (16.9.2013) by Aquaculture and Fisheries (Scotland) Act 2013 (asp 7), **ss. 60(2)(b)(i)**, 66(2) (with s. 65); S.S.I. 2013/249, art. 2

F5 S. 25(2)(a)-(d) substituted (16.9.2013) for s. 25(2)(a)(b) by Aquaculture and Fisheries (Scotland) Act 2013 (asp 7), **ss. 60(2)(b)(ii)**, 66(2) (with s. 65); S.S.I. 2013/249, art. 2

F6 S. 25(2A)-(2D) inserted (16.9.2013) by Aquaculture and Fisheries (Scotland) Act 2013 (asp 7), **ss. 60(2)(c)**, 66(2) (with s. 65); S.S.I. 2013/249, art. 2

F7 Words in s. 25(3) inserted (16.9.2013) by Aquaculture and Fisheries (Scotland) Act 2013 (asp 7), **ss. 60(2)(d)(i)**, 66(2) (with s. 65); S.S.I. 2013/249, art. 2

F8 Words in s. 25(3) inserted (16.9.2013) by Aquaculture and Fisheries (Scotland) Act 2013 (asp 7), **ss. 60(2)(d)(ii)**, 66(2) (with s. 65); S.S.I. 2013/249, art. 2

Commencement Information

I1 S. 25 in force at 1.8.2007 by S.S.I. 2007/333, **art. 2(1)**

26 Content and form of fixed penalty notice

(1) A notice must—

(a) give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence,

(b) state the amount of the appropriate fixed penalty for the offence,

(c) state the period for paying,

(d) state that, if before the period for paying has expired the person makes payment of the fixed penalty, any liability to conviction of the offence is discharged,

(e) state that the payment of a fixed penalty is not a conviction nor may it be recorded as such,

(f) state that no proceedings may be commenced against the person in respect of the offence unless—

(i) intimation of an intention not to pay the fixed penalty has been made, or

(ii) the period for paying has expired and no payment of the fixed penalty has been made,

(g) state the person to whom payment should be made, at such address and by such methods, as specified under section 27(3),

(h) state that if the person does not intend to pay the fixed penalty the person may intimate that intention in writing to such person at such address as specified under section 29(2)(b).

(2) A notice may include such other information as the Scottish Ministers think fit.

(3) The Scottish Ministers may by order prescribe the form of notices.

(4) The "period for paying" is, subject to subsection (5), a period of 28 days beginning with the day on which the notice was issued or such longer period as the notice may specify.

(5) The Scottish Ministers may for the purposes of subsection (4) specify by order a period shorter than 28 days in relation to different cases and categories of case; and may so specify such supplementary provision in connection with the shortening of the period as they consider necessary or expedient.

Commencement Information

I2 S. 26 in force at 1.8.2007 by S.S.I. 2007/333, **art. 2(1)**

27 Amount and payment of fixed penalty

(1) The Scottish Ministers may by order prescribe a scale of fixed penalties for the purposes of sections 25 to 31, the amount of the maximum penalty on the scale being a sum not exceeding **[**[F9]£10,000.**]**

(2) The "appropriate fixed penalty" means such fixed penalty on the scale prescribed under subsection (1) as the **[**[F10]fixed penalty**]** officer thinks fit having regard to the circumstances of the case and any relevant provision of an order under that subsection.

(3) The fixed penalty is to be payable to the Scottish Ministers, at such address and by such methods as the Scottish Ministers may by order specify.

Textual Amendments

F9 Words in s. 27(1) substituted (16.9.2013) by Aquaculture and Fisheries (Scotland) Act 2013 (asp 7), **ss. 60(3)(a)**, 66(2) (with s. 65); S.S.I. 2013/249, art. 2

F10 Words in s. 27(2) substituted (16.9.2013) by Aquaculture and Fisheries (Scotland) Act 2013 (asp 7), **ss. 60(3)(b)**, 66(2) (with s. 65); S.S.I. 2013/249, art. 2

Commencement Information

I3 S. 27 in force at 1.8.2007 by S.S.I. 2007/333, **art. 2(1)**

28 Effect of payment

(1) Where a person makes payment of the appropriate fixed penalty before the period for paying has expired no proceedings may be brought against the person for the offence.

(2) Payment of a fixed penalty is not a conviction nor may it be recorded as such.

Commencement Information

I4 S. 28 in force at 1.8.2007 by S.S.I. 2007/333, **art. 2(1)**

29 Intimation of non-payment

(1) A person to whom a notice is issued may, before the expiry of the period for paying, intimate an intention not to pay the fixed penalty.

(2) An intimation under subsection (1) must—

(a) be in writing,

(b) be sent by post or delivered to such person as the Scottish Ministers may by order specify at such address so specified.

Commencement Information

I5 S. 29 in force at 1.8.2007 by S.S.I. 2007/333, **art. 2(1)**

30 Restriction on proceedings and notification of procurator fiscal

(1) Proceedings in respect of an offence to which a notice relates may not be brought against the person to whom the notice relates unless the procurator fiscal has been notified in accordance with subsection (2) or (3).

(2) Where an intimation is made under section 29(1), the Scottish Ministers must notify the procurator fiscal; unless the notice is withdrawn under section 31.

(3) Where—

(a) payment of the fixed penalty has not been made before the expiry of the period for paying, and

(b) no intimation has been made under section 29(1),

the Scottish Ministers must notify the procurator fiscal; unless the notice is withdrawn under section 31.

(4) In proceedings for an offence, a certificate which—

(a) purports to be signed by or on behalf of the Scottish Ministers, and

(b) states that payment of an amount specified in the certificate was or was not received by a date so specified,

is sufficient evidence of the facts stated.

Commencement Information

I6 S. 30 in force at 1.8.2007 by S.S.I. 2007/333, **art. 2(1)**

31 Withdrawal of fixed penalty notice or expiry of period for paying

(1) A notice may be withdrawn by a **[**[F11]fixed penalty**]** officer, if the officer determines that the offence to which the notice relates was not committed or that the notice ought not to have been issued to the person to whom it was issued.

(2) Where a notice has been withdrawn—

(a) no amount is payable by way of fixed penalty in pursuance of that notice,

(b) any amount paid by way of fixed penalty in pursuance of the notice must be repaid to the person.

(3) Where the period for paying has expired no amount is payable by way of fixed penalty in pursuance of that notice.

Textual Amendments

F11 Words in s. 31(1) substituted (16.9.2013) by Aquaculture and Fisheries (Scotland) Act 2013 (asp 7), **ss. 60(4)**, 66(2) (with s. 65); S.S.I. 2013/249, art. 2

Commencement Information

I7 S. 31 in force at 1.8.2007 by S.S.I. 2007/333, **art. 2(1)**

Changes to legislation:
There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2007, Part 4.