

EXECUTIVE NOTE

THE AQUACULTURE AND FISHERIES (SCOTLAND) ACT 2007 (FIXED PENALTY NOTICES) AMENDMENT ORDER 2011

SSI 2011/60

1. This Order was made in exercise of the powers conferred by Sections 25(2)(b), 27(3), 29(2)(b) and 43(1)(b) of the Aquaculture and Fisheries (Scotland) Act 2007. The Order is subject to negative resolution procedure.

Policy Objectives

2. This Order is necessary to amend the Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Order 2008 (“the principal Order”). The principal Order provides for the offer and payment of a fixed penalty (as an alternative to prosecution) in relation to certain sea fisheries offences. The offer of such a fixed penalty is a discretionary enforcement power, exercisable by British sea-fishery officers under section 25(1) of the Aquaculture and Fisheries (Scotland) Act 2007 (“the 2007 Act”).

3. The purpose of this Order is to update the list of relevant offences for which a fixed penalty notice may be issued under section 25(1) of the 2007 Act. The Order replaces Schedule 1 to the principal Order, which specifies those relevant offences. The replacement Schedule 1 specifies additional relevant offences so as to bring them within the scope of the fixed penalty notice regime. Such offences are of a similar type to those currently specified as relevant offences; they are created by virtue of the same (or similar) enabling powers in primary legislation. This ensures consistency in enforcement policy and practice. The objective is to achieve comparative justice so that, where an alternative to prosecution is provided for in relation to one type of offence, the same opportunity is afforded in relation to similar-type offences (unless the circumstances require differential treatment). The replacement Schedule 1 also performs a tidying up exercise to re-specify some of the existing relevant offences and omit those which are no longer in force.

4. The purpose of this Order is also to update the details of the address at which a fixed penalty is payable and the person to whom, and the address to which, intimation of non-payment of a fixed penalty is to be sent. The latter reflects the fact that the Scottish Fisheries Protection Agency (“SFPA”) no longer exists and that its functions are now carried out by Marine Scotland, a Directorate of the Scottish Government. Re-direction of mail was arranged to cover the change of address. Address and contact details for payment, and intimation of non-payment, of a fixed penalty are also provided on each fixed penalty notice issued.

Consultation

5. No consultation was carried out in respect of this instrument, which makes a series of largely technical amendments to the principal Order. However, there was a full 12 week consultation exercise in 2007/08 when the proposals for the principal Order were being considered. The amendments of this Order are in accordance with, and do not go beyond, the policy objectives of the principal Order.

Impact Assessments

6. No environmental impact assessment was carried out as the application of the instrument will have no effect in relation to the environment.

7. No equality impact assessment was carried out. The instrument makes a series of technical amendments to an existing process used to provide a non-court disposal option for certain sea-fisheries offences.

Financial effects

8. The Cabinet Secretary for Rural Affairs and the Environment confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has no financial effects on the Scottish Government, local government or on business. It should also be noted, however, that a full Regulatory Impact Assessment was carried out in respect of the principal Order.

Scottish Government
Marine Scotland
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