

POLICY NOTE

THE AQUACULTURE AND FISHERIES (SCOTLAND) ACT 2007 (FIXED PENALTY NOTICES) ORDER 2015

SSI 2015/113

The above instrument was made in exercise of the powers conferred by sections 26(5), 27(1) and (3), 29(2)(b), and 43(1)(b) of the Aquaculture and Fisheries (Scotland) Act 2007, as amended. The instrument is subject to negative procedure.

Policy Objectives

This Order is necessary to reflect the changes made to the Aquaculture and Fisheries (Scotland) Act 2007 (“the 2007 Act”) by the Aquaculture and Fisheries (Scotland) Act 2013 (“the 2013 Act”). It will revoke the Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Order 2008 (“the 2008 Order”) and the Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Amendment Order 2011. The 2008 Order, made under the provisions of the 2007 Act as originally enacted, provided for the offer and payment of a fixed penalty (as an alternative to prosecution) in relation to certain sea fisheries offences.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, which was originally exercisable by British sea-fisheries officers under section 25(1) of the 2007 Act.

The 2013 Act amended the provisions of the Fixed Penalty Notice (FPN) scheme as set out in the 2007 Act. It is therefore necessary to make changes to the FPN scheme as set out in the 2008 Order so that the 2013 Act amendments are reflected in subordinate legislation. The 2007 Act originally set the maximum penalty level of an FPN at £2,000. The 2013 Act amended this by setting a new upper limit of £10,000. The 2013 Act also changed the 2007 Act by setting out the relevant offences directly in the provisions of the 2007 Act, rather than leaving this to be set out in subordinate legislation. The amendments made by the 2013 Act came into force in September 2013.

The purpose of the Order is to update and add new levels of penalty to the existing scale of fixed penalties to reflect the new maximum level set out in the 2007 Act as amended by the 2013 Act. The existing scale of fixed penalties, as set out in the 2008 Order, consists of four levels: £250, £500, £1,000 and £2,000. The new scale will consist of seven levels: £500, £1,000, £2,000, £4,000, £5,000, £8,000 and £10,000. The policy aim is to provide a greater spread of penalty levels leading up to the new upper limit of £10,000. This is intended to provide greater deterrence, promote compliance and achieve proportionate sanctions for offences.

A key aspect of the current fixed penalty scheme is the ability to “double up”. A first offence attracts a certain level of penalty and a second offence of a similar nature to the first attracts a penalty of double. A third offence of a similar nature will result in referral to the Crown Office and Procurator Fiscal Service (“COPFS”) for consideration of prosecution. With the proposed levels set, a first offence could now attract a penalty of £2000 and a second offence of £4000 whereas before the second offence would require to be referred to COPFS. Or a first offence could attract a penalty of £5000 and a second offence £10,000 whereas the first offence would be referred to COPFS under the current levels. The proposed levels are to

enable the doubling up principle to continue to be followed within the new limits agreed by Parliament.

The list of relevant offences which was set out in the 2008 Order is no longer necessary as the offences are now set out directly in the provisions of the 2007 Act, as amended by the 2013 Act.

Another purpose of this Order is 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.

This Order sets a new scale of penalties without making changes in enforcement policy or operational enforcement practice in relation to the FPN scheme. However, by virtue of the amendments made by the 2013 Act, the scope of the FPN scheme has been extended beyond suspected fisheries offences, so that FPNs can now be offered in respect of certain marine licensing, aquatic animal health and marine nature conservation and protection offences.

The proposed new penalty levels will continue to provide a mechanism for resolution of suspected offences that provides certainty for suspected offenders in terms of costs and outcome. The alternative, referral to COPFS, provides uncertainty with regards to legal costs and outcome. Resolution through the fixed penalty scheme also provides a means of comparatively quick resolution and also means that a criminal conviction can be avoided. If a person does not perceive any benefit in being offered and paying the fixed penalty they are not obliged to pay it and can choose for their case to be dealt with through the courts.

Consultation

The principles of the FPN scheme have been considered previously. This Order does not alter any of those considerations in any way, it merely provides for a broader range of penalties within an upper limit that the Scottish Parliament agreed to when the 2013 Act was made.

Given that the Parliament has already agreed to the maximum level of penalty available under the expanded FPN scheme, it was considered that the new scale of fixed penalties in the Order, would not require further public consultation. It ensures full use of a broad range of penalties allowed by the 2007 Act, as amended by the 2013 Act.

A partial Business and Regulatory Impact Assessment has been completed.

Impact Assessments

There are no apparent equality issues. The Order makes amendments to an existing process used to provide a non-court disposal option for certain offences. The penalty levels in this Order only impact on those who are suspected of committing an offence. For the vast majority of law abiding people in the fishing and marine industries, this Order will have no impact whatsoever.

Financial Effects

The objective of an FPN is to have a financial effect on the person to whom it has been offered as an alternative to prosecution. The only persons on whom this will impact are those who break the law and are offered an FPN as a result of their alleged actions, which may be of a higher level than they would have been offered previously. There are no other financial impacts arising from this Order that would fall on local Government, business or indeed the Scottish Government. This Order simply helps provide a broader range of penalty levels that fixed penalty officers can consider when a case is taken forward for enforcement. The new scale will allow fixed penalties to be offered at higher levels and therefore act as a more effective deterrent to committing offences. There will be no additional costs on the current costs of enforcement.

A partial Business and Regulatory Impact Assessment has been prepared and is available from Marine Scotland or may be accessed online at www.legislation.gov.uk .

Scottish Government

Directorate for Marine Scotland

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