
DRAFT STATUTORY INSTRUMENTS

2018 No.

The Offshore Environmental Civil Sanctions Regulations 2018

PART 2

Fixed monetary penalties

Fixed monetary penalties: power to impose

4.—(1) If the Secretary of State is satisfied beyond reasonable doubt that a person has committed a FMP offence, the Secretary of State may, in accordance with this Part, impose a fixed monetary penalty on the person in relation to the offence.

(2) An offence is a “FMP offence” if—

- (a) the offence is contained in a provision specified in column 1 of any of the tables in the Schedule; and
- (b) “Yes” is set out in the corresponding entry in column 2 of that table.

(3) A “fixed monetary penalty”, in relation to a FMP offence, is a requirement to pay to the Secretary of State a penalty of the amount set out in the corresponding entry in column 3 of that table.

Fixed monetary penalties: duty to serve notice of intent

5.—(1) This regulation applies where the Secretary of State proposes to impose a fixed monetary penalty on a person in relation to an act or omission constituting a FMP offence.

(2) Before imposing a fixed monetary penalty, the Secretary of State must first serve on the person a notice of what is proposed (a “notice of intent”) that complies with regulation 6.

(3) But no notice of intent may be served if—

- (a) the Secretary of State has previously imposed a fixed or variable monetary penalty on the person in relation to an offence constituted by the act or omission;
- (b) the person has discharged liability to a fixed monetary penalty in relation to an offence constituted by the act or omission under regulation 5(4);
- (c) the act or omission constituted a breach of a term or condition of a relevant permit and the permit has been revoked because of the breach; or
- (d) criminal proceedings have been instituted in relation to an offence constituted by the act or omission.

(4) The person on whom the notice of intent is served may discharge the person’s liability for the fixed monetary penalty by paying two-thirds of the amount of the fixed monetary penalty to the Secretary of State within the period of 28 days beginning with the day on which the notice of intent is received.

(5) The person on whom the notice of intent is served may make written representations and objections to the Secretary of State in relation to the proposed imposition of the fixed monetary penalty within the period of 28 days beginning with the day on which the notice of intent is received.

Fixed monetary penalties: content of notice of intent

6. The notice of intent must—
- (a) include information as to the grounds for the proposal to impose the fixed monetary penalty (including details of the act or omission referred to in regulation 5(1));
 - (b) state the amount of the fixed monetary penalty;
 - (c) state that the person on whom the notice of intent is served may discharge the liability in accordance with regulation 5(4) within the period referred to in that paragraph and include information as to how payment may be made;
 - (d) state that the person on whom the notice of intent is served has the right to make written representations and objections to the Secretary of State in relation to the proposed imposition of the fixed monetary penalty within the period referred to in regulation 5(5) and include information about how representations and objections may be made; and
 - (e) include information as to the circumstances in which the Secretary of State may not impose the fixed monetary penalty.

Fixed monetary penalties: decision to impose

7.—(1) This regulation applies where the person on whom the notice of intent was served does not discharge the person's liability for the fixed monetary penalty in accordance with regulation 5(4).

(2) After the end of the period referred to in regulation 5(5) (period in which person may make representations and objections), the Secretary of State must—

- (a) consider any representations and objections made by the person; and
- (b) decide whether or not to impose the fixed monetary penalty.

(3) The Secretary of State may not impose a fixed monetary penalty on a person in relation to a FMP offence if the Secretary of State is satisfied that the person would not, by reason of any defence raised by the person, be liable to be convicted of the offence.

(4) If the Secretary of State decides not to impose the fixed monetary penalty, the Secretary of State must give notice in writing to the person on whom the notice of intent was served.

(5) If the Secretary of State decides to impose the fixed monetary penalty, the Secretary of State must serve on the person on whom the notice of intent was served a notice (a "final notice") that complies with regulation 8.

(6) A person on whom a final notice is served must pay to the Secretary of State the amount of the fixed monetary penalty within the period of 28 days beginning with the day on which the final notice is received.

(7) The Secretary of State may at any time withdraw a final notice by giving notice in writing to the person on whom the final notice was served.

Fixed monetary penalties: content of final notice

8. The final notice must state the amount of the fixed monetary penalty and include information as to—

- (a) the grounds for imposing the fixed monetary penalty;
- (b) how payment may be made;
- (c) the period within which payment must be made;
- (d) rights of appeal; and
- (e) the consequences of non-payment.

Fixed monetary penalties: appeals

9.—(1) A person on whom a final notice is served may appeal to the Tribunal in relation to the decision to impose the fixed monetary penalty on any of the following grounds—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unreasonable;
- (d) any other reason.

(2) In any appeal where the commission of an offence is an issue requiring determination, the relevant enforcement authority must prove that offence according to the same burden and standard of proof as in a criminal prosecution.

(3) In any other case the Tribunal must determine the standard of proof.

(4) Where an appeal is made in relation to a decision to impose a fixed monetary penalty, the fixed monetary penalty is suspended until a decision is made by the Tribunal in respect of the appeal.

(5) On an appeal, the Tribunal may do any of the following—

- (a) confirm the decision to impose the fixed monetary penalty;
- (b) set aside the decision to impose the fixed monetary penalty;
- (c) award costs.

Fixed monetary penalties: criminal proceedings and convictions

10.—(1) Where a notice of intent is served on a person under regulation 5—

- (a) no criminal proceedings for the offence in relation to which the notice was served may be instituted against the person in respect of the act or omission referred to in regulation 5(1) before the end of the period referred to in regulation 5(4);
- (b) if the person discharges the liability for the fixed monetary penalty in accordance with regulation 5(4), the person may not at any time be convicted of that offence in respect of the act or omission.

(2) Where a fixed monetary penalty is imposed on a person in relation to an offence, the person may not at any time be convicted of the offence in respect of the act or omission giving rise to the penalty.