
DRAFT STATUTORY INSTRUMENTS

2018 No.

The Offshore Environmental Civil Sanctions Regulations 2018

PART 3

Variable monetary penalties

Variable monetary penalties: power to impose

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

(2) An offence is a “VMP 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 4.

(3) A “variable monetary penalty”, in relation to a VMP offence, is a requirement to pay to the Secretary of State a penalty of an amount determined by the Secretary of State.

(4) The amount of any variable monetary penalty must not exceed £50,000.

Variable monetary penalties: duty to serve notice of intent

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

(2) Before imposing a variable 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 13.

(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- (c) the act or omission constituted a breach of a term or condition of a relevant permit and the permit has been revoked because of the breach; or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 offer to the Secretary of State within the period of 35 days beginning with the day on which the notice of intent is received an undertaking as to action to be taken by the person (including the payment of a sum of money) to benefit any person affected by the offence in relation to which the notice of intent is served.

(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 variable monetary penalty within the period of 35 days beginning with the day on which the notice of intent is received.

Variable monetary penalties: content of notice of intent

13. The notice of intent must—

- (a) include information as to the grounds for the proposal to impose the variable monetary penalty (including details of the act or omission referred to in regulation 12(1));
- (b) state the amount of the variable monetary penalty;
- (c) state that the person on whom the notice of intent is served may offer to the Secretary of State within the period referred to in regulation 12(4) an undertaking as to action to be taken by the person (including the payment of a sum of money) to benefit any person affected by the offence in relation to which the notice of intent is served and include information about how an undertaking may be offered;
- (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 variable monetary penalty within the period referred to in regulation 12(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 variable monetary penalty.

Variable monetary penalties: decision to impose and to accept or reject undertaking

14.—(1) After the end of the period referred to in regulation 12(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 on whom the notice of intent was served;
- (b) decide whether to accept or reject any undertaking offered by the person and, if the Secretary of State decides to accept an undertaking, take the undertaking into account in making the decision referred to in sub-paragraph (c); and
- (c) decide to do one of the following—
 - (i) not to impose a variable monetary penalty;
 - (ii) to impose a variable monetary penalty of the amount stated in the notice of intent;
 - (iii) to impose a variable monetary penalty of a lower amount.

(2) The Secretary of State may not impose a variable 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.

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

(4) If the Secretary of States decides to accept an undertaking from the person on whom the notice of intent was served, the Secretary of State must give notice in writing to the person.

(5) If the Secretary of State decides to impose a variable 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 15.

(6) A person on whom a final notice is served must pay to the Secretary of State the amount of the variable 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.

Variable monetary penalties: content of final notice

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

- (a) the grounds for imposing the variable monetary penalty;
- (b) details of any undertaking that has been accepted;
- (c) how payment may be made;
- (d) the period within which payment must be made;
- (e) rights of appeal; and
- (f) the consequences of non-payment.

Variable monetary penalties: appeals

16.—(1) A person on whom a final notice is served may appeal to the Tribunal in relation to the decision to impose the variable 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 amount of the variable monetary penalty is unreasonable;
- (d) that the decision was unreasonable for any other reason;
- (e) 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 variable monetary penalty, the variable 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 amount of the variable monetary penalty;
- (b) reduce the amount of the variable monetary penalty;
- (c) set aside the decision to impose the variable monetary penalty;
- (d) award costs.

Variable monetary penalties: criminal proceedings and convictions

17.—(1) Where a variable 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.

(2) Where an undertaking is accepted from 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 undertaking, except in a case where—

- (a) no variable monetary penalty was imposed on the person in respect of the act or omission giving rise to the undertaking; and
- (b) the person fails to comply with the undertaking.

Non-compliance penalties: power to impose where undertaking not complied with

18.—(1) This regulation applies where—

- (a) the Secretary of State accepts an undertaking from the person on whom the notice of intent was served; and
- (b) the person fails to comply with the undertaking.

(2) The Secretary of State may, by notice (a “non-compliance penalty notice”) served on the person, impose a non-compliance penalty on the person.

(3) A “non-compliance penalty” is a requirement to pay to the Secretary of State a penalty of an amount determined by the Secretary of State.

(4) The amount of any non-compliance penalty must not exceed £50,000.

(5) The non-compliance penalty notice must state the amount of the non-compliance penalty and include information as to—

- (a) the grounds for imposing the non-compliance 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.

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

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

Non-compliance penalties: appeals

19.—(1) A person on whom a non-compliance penalty notice is served may appeal to the Tribunal against the decision to serve the notice 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 unfair or unreasonable for any reason (including that the amount of the non-compliance penalty is unreasonable);
- (d) any other reason.

(2) Where an appeal is made against a decision to serve a non-compliance penalty notice, the non-compliance penalty is suspended until a decision is made by the Tribunal in respect of the appeal.

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

- (a) confirm the amount of the non-compliance penalty;
- (b) reduce the amount of the non-compliance penalty;

- (c) set aside the decision to impose the non-compliance penalty;
- (d) award costs.