

AQUACULTURE AND FISHERIES (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Part 4: Sea Fisheries

Fixed penalty notices

Section 25 – Issue of fixed penalty notices

65. Section 25 provides warranted British sea-fishery officers with the power to issue a fixed penalty notice to a person whom the officer has reasonable grounds for suspecting to have committed a relevant offence. Subsection (2) defines a relevant offence as an offence under the Sea Fisheries enactments that has been specified by the Scottish Ministers by order made by statutory instrument. Subsection (3) defines “Sea Fisheries enactments” as 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.

Section 26 – Content and form of fixed penalty notice

66. This section provides for the detail that should be contained in a fixed penalty notice. Subsection (1) prescribes the information which must be set out in a fixed penalty notice. Paragraph (a) provides that the notice must give sufficient detail of the circumstances alleged to constitute the offence as is necessary to give reasonable information about the alleged offence; paragraphs (b) and (c) require the notice to specify the amount of the penalty and the period for paying; paragraph (d) requires the notice to state that if before the period for paying has expired the person makes payment of the fixed penalty, any liability for conviction of the offence is discharged; paragraph (e) requires the notice to state that the payment of the fixed penalty is not a conviction and may not be recorded as such; paragraph (f) requires the notice to state that no proceedings may be commenced unless intimation of an intention not to pay the fixed penalty has been made or the period for paying has expired without payment being made; paragraph (g) requires the notice to specify to whom, where and by what means payment should be made; and paragraph (h) requires the notice to state that if the person does not intend to pay the fixed penalty the person may intimate that intention in writing as provided in section 29(2)(b). Subsection (2) permits the Scottish Ministers to include in a notice such other information as they think fit, and subsection (3) gives the Scottish Ministers power by order to prescribe the form of notices. Subsection (4) defines the period for paying as 28 days, subject to any order made under subsection (5), which permits the Scottish Ministers by order to specify a period shorter than 28 days in relation to different cases and categories of case (which are most likely to be those relating to persons who are domiciled outside the UK).

Section 27 – Amount and payment of fixed penalty

67. Subsection (1) allows for the Scottish Ministers to prescribe a scale of fixed penalties for the purposes of sections 25 to 31, the amount of the maximum penalty on the scale not to exceed a sum of 80% of level 4 on the standard scale. Level 4 currently equates to £2,500, giving a maximum penalty of no more than £2,000. Subsection (2) defines “appropriate fixed penalty” as such fixed penalty on the scale prescribed under subsection (1) as the British sea-fishery officer thinks fit having regard to the circumstances of the case and any relevant provision of an order under that subsection. Subsection (3) provides that the payment must be made to the Scottish Ministers at such address and by such methods as the Scottish Ministers may by order specify.

Section 28 – Effect of payment

68. Section 28 sets out the effect of payment of the appropriate fixed penalty. Subsection (1) provides that when a person makes payment before the period of paying has expired, no proceedings may be brought against the person for the offence. Subsection (2) provides that payment of a fixed penalty is not a conviction and may not be recorded as such.

Section 29 – Intimation of non-payment

69. Section 29 provides that a person can intimate before the expiry date of the fixed penalty that they do not intend to pay. Subsection (2) provides for the method by which a person can intimate that they do not intend to pay, subsection (2)(b) permitting the Scottish Ministers by order to specify the person to whom, and the address to which, such intimation may be sent or delivered.

Section 30 – Restriction on proceedings and notification of procurator fiscal

70. Section 30(1) prevents proceedings in respect of an offence to which a notice relates from being brought against the person to whom the notice relates unless the procurator fiscal has been notified in accordance with subsection (2) or (3). Subsection (2) requires the Scottish Ministers (unless the notice has been withdrawn under section 31) to notify the procurator fiscal if they receive intimation, in terms of section 29(1), that the person to whom the notice was issued does not intend to pay the fixed penalty. Subsection (3) requires the Scottish Ministers (unless the notice has been withdrawn) to notify the procurator fiscal if payment of the fixed penalty has not been made before the expiry of the period for paying and no intimation has been made under section 29(1). Subsection (4) makes provision about the evidential status of a certificate stating that payment of an amount specified in the certificate was or was not received by a specified date, providing that any such certificate which purports to be signed by or on behalf of the Scottish Ministers is sufficient evidence of the facts stated.

Section 31 – Withdrawal of a fixed penalty notice or expiry of period for paying

71. Section 31(1) allows a British sea-fishery officer to withdraw a fixed penalty notice if the officer determines that the offence to which it relates was not committed or that the notice ought not to have been issued to the person to whom it was issued. Subsection (2) provides that where a notice has been withdrawn, no amount is payable by way of fixed penalty in pursuance of that notice, and any amount which has already been paid must be repaid. Subsection (3) provides that where the period for paying has expired, no amount is payable by way of fixed penalty in pursuance of that notice.

Miscellaneous

Section 32 – Amendment of the Sea Fisheries (Shellfish) Act 1967

72. Section 32(1) amends section 3(3) of the Sea Fisheries (Shellfish) Act 1967 to increase the maximum fine level for an offence under a Regulating Order to £50,000. A Regulating Order is secondary legislation made under the 1967 Act which provides

*These notes relate to the Aquaculture and Fisheries (Scotland)
Act 2007 (asp 12) which received Royal Assent on 5th April 2007*

a local management mechanism for agreed shellfish stocks in defined areas whereby a grantee may use a licensing system to manage stocks and effort in the fisheries. Subsection (2) amends section 4(7) of the Sea Fisheries (Shellfish) Act 1967 to provide that the discretionary revocation of a licence by the grantee can happen after the licence holder is convicted of one fisheries offence. Previously, this could only happen after a second offence.

Section 33 – Enforcement of Community obligations

73. This section amends section 30(1) of the Fisheries Act 1981 (Enforcement of Community rules) to apply the provisions of that subsection to enforceable Community obligations (for example, the obligation on certain fishing vessels to have a working satellite tracking device on board) as well as enforceable Community restrictions.