



# Aquaculture and Fisheries (Scotland) Act 2007

2007 asp 12

## PART 4

### SEA FISHERIES

#### *Fixed penalty notices*

#### **25 Issue of fixed penalty notices**

- (1) Where a British sea-fishery officer has reasonable grounds for suspecting that a person has committed a relevant offence, the officer may issue the person with a fixed penalty notice.
- (2) In subsection (1), a relevant offence is an offence—
  - (a) under the Sea Fisheries enactments, and
  - (b) specified by the Scottish Ministers by order.
- (3) In this Part—
  - “appropriate fixed penalty” has the meaning given in section 27(2);
  - “British sea-fishery officer” means any person who by virtue of section 7 of the Sea Fisheries Act 1968 (c. 77) is a British sea-fishery officer;
  - “period for paying” has the meaning given in section 26(4);
  - “notice” means a fixed penalty notice issued under subsection (1);
  - “Sea Fisheries enactments” means 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.

#### **26 Content and form of fixed penalty notice**

- (1) A notice must—
  - (a) give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence,

- (b) state the amount of the appropriate fixed penalty for the offence,
  - (c) state the period for paying,
  - (d) state that, if before the period for paying has expired the person makes payment of the fixed penalty, any liability to conviction of the offence is discharged,
  - (e) state that the payment of a fixed penalty is not a conviction nor may it be recorded as such,
  - (f) state that no proceedings may be commenced against the person in respect of the offence unless—
    - (i) intimation of an intention not to pay the fixed penalty has been made, or
    - (ii) the period for paying has expired and no payment of the fixed penalty has been made,
  - (g) state the person to whom payment should be made, at such address and by such methods, as specified under section 27(3),
  - (h) state that if the person does not intend to pay the fixed penalty the person may intimate that intention in writing to such person at such address as specified under section 29(2)(b).
- (2) A notice may include such other information as the Scottish Ministers think fit.
- (3) The Scottish Ministers may by order prescribe the form of notices.
- (4) The “period for paying” is, subject to subsection (5), a period of 28 days beginning with the day on which the notice was issued or such longer period as the notice may specify.
- (5) The Scottish Ministers may for the purposes of subsection (4) specify by order a period shorter than 28 days in relation to different cases and categories of case; and may so specify such supplementary provision in connection with the shortening of the period as they consider necessary or expedient.

## **27 Amount and payment of fixed penalty**

- (1) The Scottish Ministers may by order prescribe a scale of fixed penalties for the purposes of sections 25 to 31, the amount of the maximum penalty on the scale being a sum not exceeding 80 per cent of level 4 on the standard scale.
- (2) The “appropriate fixed penalty” means 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.
- (3) The fixed penalty is to be payable to the Scottish Ministers, at such address and by such methods as the Scottish Ministers may by order specify.

## **28 Effect of payment**

- (1) Where a person makes payment of the appropriate fixed penalty before the period for paying has expired no proceedings may be brought against the person for the offence.
- (2) Payment of a fixed penalty is not a conviction nor may it be recorded as such.

## **29 Intimation of non-payment**

- (1) A person to whom a notice is issued may, before the expiry of the period for paying, intimate an intention not to pay the fixed penalty.
- (2) An intimation under subsection (1) must—
  - (a) be in writing,
  - (b) be sent by post or delivered to such person as the Scottish Ministers may by order specify at such address so specified.

## **30 Restriction on proceedings and notification of procurator fiscal**

- (1) Proceedings in respect of an offence to which a notice relates may not be brought against the person to whom the notice relates unless the procurator fiscal has been notified in accordance with subsection (2) or (3).
- (2) Where an intimation is made under section 29(1), the Scottish Ministers must notify the procurator fiscal; unless the notice is withdrawn under section 31.
- (3) Where—
  - (a) payment of the fixed penalty has not been made before the expiry of the period for paying, and
  - (b) no intimation has been made under section 29(1),the Scottish Ministers must notify the procurator fiscal; unless the notice is withdrawn under section 31.
- (4) In proceedings for an offence, a certificate which—
  - (a) purports to be signed by or on behalf of the Scottish Ministers, and
  - (b) states that payment of an amount specified in the certificate was or was not received by a date so specified,is sufficient evidence of the facts stated.

## **31 Withdrawal of fixed penalty notice or expiry of period for paying**

- (1) A notice may be withdrawn by a British sea-fishery officer, if the officer determines that the offence to which the notice relates was not committed or that the notice ought not to have been issued to the person to whom it was issued.
- (2) Where a notice has been withdrawn—
  - (a) no amount is payable by way of fixed penalty in pursuance of that notice,
  - (b) any amount paid by way of fixed penalty in pursuance of the notice must be repaid to the person.
- (3) Where the period for paying has expired no amount is payable by way of fixed penalty in pursuance of that notice.

### *Miscellaneous*

## **32 Amendment of the Sea Fisheries (Shellfish) Act 1967**

- (1) In section 3(3) of the Sea Fisheries (Shellfish) Act 1967 (c. 83) (effect of grant of right of regulating a fishery), for “level 2 on the standard scale” substitute “£50,000”.

- (2) In section 4(7) of that Act (licensing powers in case of regulated fishery)—
- (a) for the words “, having been” substitute “is”,
  - (b) the words “, is subsequently convicted of another such offence” are repealed.

### **33 Enforcement of Community obligations**

In section 30(1) of the Fisheries Act 1981 (c. 29) (enforcement of Community rules)—

- (a) after “restrictions”, where it first appears, insert “, and enforceable Community obligations”,
- (b) in paragraph (a), after “restriction” insert “or obligation”,
- (c) in paragraph (c), after “restrictions” insert “and obligations”.