



Marine (Scotland) Act 2010

2010 asp 5

PART 4

MARINE LICENSING

Enforcement notices

43 Compliance notice

- (1) If it appears to the Scottish Ministers that subsection (3) is satisfied in relation to a person carrying on an activity, they may issue a compliance notice to that person.
- (2) A compliance notice is a notice requiring a person to take such steps (falling within subsection (4)(b)) as are specified in it.
- (3) This subsection is satisfied if—
 - (a) a person holding a marine licence—
 - (i) has carried on, or is carrying on, a licensable marine activity under the licence,
 - (ii) in carrying on that activity has failed, or is failing, to comply with a condition of the licence, and
 - (b) the carrying on of the activity has not caused, and is not likely to cause, any of the following—
 - (i) serious harm to the environment,
 - (ii) serious harm to human health,
 - (iii) serious interference with legitimate uses of the sea.
- (4) A compliance notice must—
 - (a) state the Scottish Ministers' grounds for believing that subsection (3) is satisfied,
 - (b) require the person to take such steps as the Scottish Ministers consider appropriate to ensure that the condition in question is complied with,
 - (c) state the period before the end of which those steps must be taken.

Status: This is the original version (as it was originally enacted).

44 Remediation notice

- (1) If it appears to the Scottish Ministers that subsection (3) is satisfied in relation to a person carrying on an activity, they may issue a remediation notice to the person.
- (2) A remediation notice is a notice requiring a person to do either or both of the following—
 - (a) to take such steps (falling within subsection (5)(b)) as are specified in it,
 - (b) to pay to the Scottish Ministers any sum (falling within subsection (5)(c)) as is specified in it.
- (3) This subsection is satisfied if—
 - (a) a person has carried on, or is carrying on, a licensable marine activity,
 - (b) the carrying on of the activity has involved, or involves, the commission of an offence under section 39(1), and
 - (c) the carrying on of the activity has caused, or is causing or is likely to cause, any of the following—
 - (i) harm to the environment,
 - (ii) harm to human health,
 - (iii) interference with legitimate uses of the sea.
- (4) Before issuing a remediation notice, the Scottish Ministers must consult the person to whom it is proposed to be issued as to the steps or (as the case may be) the sum to be specified in the notice.
- (5) A remediation notice—
 - (a) must state the Scottish Ministers' grounds for believing that subsection (3) is satisfied,
 - (b) may require the person to take such remedial or compensatory steps as the Scottish Ministers consider appropriate,
 - (c) may require the person to pay a sum representing the reasonable expenses of any remedial or compensatory steps taken, or to be taken, by the Scottish Ministers whether under section 59 (power to take remedial action) or otherwise,
 - (d) must state the period before the end of which the steps must be taken or (as the case may be) that sum must be paid.
- (6) In subsection (5)(b) and (c) "remedial or compensatory steps" means steps taken (or to be taken) for any one or more of the purposes mentioned in subsection (7) (whether or not the steps are taken at or near the place where the harm or interference mentioned in subsection (3)(c) has been, is being, or is likely to be, caused or the activity in respect of which the notice is issued is or has been carried on).
- (7) The purposes are—
 - (a) protecting the environment,
 - (b) protecting human health,
 - (c) preventing interference with legitimate uses of the sea,
 - (d) preventing or minimising, or remedying or mitigating the effects of, the harm or interference mentioned in subsection (3)(c),
 - (e) restoring (whether in whole or in part) the condition of any place affected by that harm or interference to the condition, or a condition reasonably similar to

the condition, in which the place would have been had the harm or interference not occurred,

- (f) such purposes not falling within the preceding paragraphs as the Scottish Ministers consider appropriate in all the circumstances of the case.

45 Further provision as to compliance and remediation notices

- (1) A compliance notice or remediation notice—
 - (a) must be served on any person carrying on or in control of the activity to which the notice relates,
 - (b) if a marine licence has been granted in relation to that activity, may also be served on the licensee.
- (2) The Scottish Ministers may by a further notice—
 - (a) revoke a compliance notice or remediation notice,
 - (b) vary a compliance notice or remediation notice so as to extend the period specified in accordance with section 43(4)(c) or (as the case may be) section 44(5)(d).
- (3) A person who fails to comply with—
 - (a) a compliance notice, or
 - (b) a remediation notice,commits an offence.
- (4) A person guilty of an offence under subsection (3) is liable—
 - (a) on summary conviction, to a fine not exceeding £50,000,
 - (b) on conviction on indictment, to a fine or to imprisonment for a period not exceeding 2 years, or to both.