



# Marine (Scotland) Act 2010

## 2010 asp 5

### PART 4

#### MARINE LICENSING

##### *Civil sanctions*

#### **47 Fixed monetary penalties: procedure**

- (1) Provision under section 46(1) must secure the results in subsection (2).
- (2) The results are that—
  - (a) where the Scottish Ministers propose to impose a fixed monetary penalty on a person, they must serve on the person a notice of what is proposed (a “notice of intent”) which complies with subsection (3),
  - (b) the notice of intent also offers the person the opportunity to discharge the person’s liability for the fixed monetary penalty by payment of a specified sum (which must be less than or equal to the amount of the penalty),
  - (c) if the person does not so discharge liability—
    - (i) the person may make written representations and objections to the Scottish Ministers in relation to the proposed imposition of the fixed monetary penalty, and
    - (ii) the Scottish Ministers must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,
  - (d) where the Scottish Ministers decide to impose the fixed monetary penalty, the notice imposing it (“the final notice”) complies with subsection (5), and
  - (e) the person on whom a fixed monetary penalty is imposed may appeal to the sheriff against the decision to impose it.
- (3) To comply with this subsection the notice of intent must include information as to—
  - (a) the grounds for the proposal to impose the fixed monetary penalty,
  - (b) how payment to discharge the liability for a fixed monetary payment may be made,
  - (c) the effect of payment of the sum referred to in subsection (2)(b),

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*Status: This is the original version (as it was originally enacted).*

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- (d) the right to make representations and objections,
  - (e) the circumstances in which the Scottish Ministers may not impose the fixed monetary penalty,
  - (f) the period within which liability to the fixed monetary penalty may be discharged, which must not exceed the period of 28 days beginning with the day on which the notice of intent was received, and
  - (g) the period within which representations and objections may be made, which must not exceed the period of 28 days beginning with the day on which the notice of intent was received.
- (4) Provision to secure the result in subsection (2)(c)(ii)—
- (a) must secure that the Scottish Ministers may not decide to impose a fixed monetary penalty on a person where they are satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence in relation to which the penalty is proposed to be imposed, and
  - (b) may include provision for other circumstances in which the Scottish Ministers may not decide to impose a fixed monetary penalty.
- (5) To comply with this subsection the final notice must include information as to—
- (a) the grounds for imposing the penalty,
  - (b) how payment may be made,
  - (c) the period within which payment must be made,
  - (d) the early payment discounts or late payment penalties,
  - (e) rights of appeal, and
  - (f) the consequences of non-payment.
- (6) Provision to secure the result in subsection (2)(e) must secure that the grounds on which a person may appeal against a decision of the Scottish Ministers include that—
- (a) the decision was based on an error of fact,
  - (b) the decision was wrong in law,
  - (c) the decision was unreasonable.
- (7) In this section “specified” means specified in an order made under section 46.