

FOOD (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE ACT

Part 3: Administrative Sanctions

Section 36: Fixed penalty notices

44. This section provides for fixed penalty notices for relevant offences, as an opportunity for the person who is believed to have committed the offence to discharge liability by paying a specified sum of money. The Scottish Ministers, by regulations, will specify the sum of money to be paid as a penalty for the fixed penalty notice. The sum of money which the Scottish Ministers can specify for a fixed penalty notice (or different sums in respect of notices for different relevant offences) cannot exceed level 4 on the standard scale (currently £2,500). Setting this by regulation allows for the sum to be changed over time in line with the cost of living and inflation without having to amend primary legislation.
45. These fixed penalty notices can be issued by authorised officers to someone who they believe has breached a relevant offence. The standard of proof to be used to satisfy authorised officers that a relevant offence has been committed before they can issue a fixed penalty notice – i.e. beyond reasonable doubt or on the balance of probability etc. – is also to be set by regulations. This allows for changes to be made to the standard to reflect changing circumstances without having to amend primary legislation. Under section 49 of the Act, the Scottish Ministers can also make supplementary, incidental or consequential provisions to the fixed penalty scheme by regulations. The definition of “relevant offence” in section 52 contains a power which enables the Scottish Ministers to specify which offences in food legislation are to be relevant offences.
46. Setting sums of money payable, the standard and other aspects of the sanctions regime by regulations gives flexibility. One of the main reasons for building in flexibility is to align the regime to guidance issued by the Lord Advocate from time to time. Under section 51 of this Act the Lord Advocate may issue guidance to enforcement authorities about the exercise of fixed penalty notices. Enforcement authorities must comply with that guidance.