



# Food (Scotland) Act 2015

## 2015 asp 1

### PART 3

#### ADMINISTRATIVE SANCTIONS

##### *Fixed penalty notices*

#### **36 Fixed penalty notices**

- (1) An authorised officer of the appropriate enforcement authority may issue to a person a fixed penalty notice in relation to a relevant offence.
- (2) In this Part, “fixed penalty notice” means a notice offering the person to whom it is issued the opportunity to discharge liability to conviction for the relevant offence in relation to which the notice is issued by paying to the appropriate enforcement authority a specified sum of money.
- (3) The sum of money is to be treated as paid only if it is paid by such method of payment as the appropriate enforcement authority determines to be acceptable.
- (4) An authorised officer may issue a fixed penalty notice to a person in relation to a relevant offence only if the officer is satisfied to the specified standard that the person has committed the offence.
- (5) A sum specified for the purposes of subsection (2) must not exceed level 4 on the standard scale.
- (6) In this section, “standard scale” has the meaning given in section 225(1) of the Criminal Procedure (Scotland) Act 1995.

#### **37 Content and form of a fixed penalty notice**

- (1) A fixed penalty notice must include the following information—
  - (a) a statement of the grounds for issuing the notice, including a statement of—
    - (i) the relevant offence that is alleged to have been committed, and
    - (ii) the act or omission giving rise to the offence,

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- (b) the amount of the sum that is to be paid to the appropriate enforcement authority,
  - (c) the date of issue of the notice,
  - (d) an explanation of how payment is to be made to the appropriate enforcement authority,
  - (e) the period of time within which payment is to be made,
  - (f) information about any early payment discounts,
  - (g) information about the person to whom, and as to how and by when, any representations about the notice may be made,
  - (h) an explanation of the effect of making payment in accordance with the notice and of the consequences of failure to make payment in accordance with the notice.
- (2) The reference in subsection (1)(e) to the period of time within which payment is to be made is a reference to such period, beginning with the date on which the notice was issued, as may be specified.
- (3) The Scottish Ministers may by regulations make further provision about the form and content of fixed penalty notices including, in particular—
- (a) provision about the form and content of any of the information required to be included under subsection (1),
  - (b) provision about other information that is to be included in addition to that required under subsection (1).

### **38 Effect of a fixed penalty notice on criminal proceedings**

- (1) Where a fixed penalty notice is issued to a person in relation to a relevant offence—
- (a) no criminal proceedings for the relevant offence may be brought against the person in respect of the relevant act or omission before the end of the payment period, and
  - (b) if the person makes payment in accordance with the notice, the person may not at any time be convicted of the relevant offence in respect of the relevant act or omission.
- (2) In subsection (1), “the relevant act or omission” means the act or omission—
- (a) constituting the relevant offence, and
  - (b) by reason of which the fixed penalty notice is issued.

### **39 Restrictions on issuing of a fixed penalty notice**

- (1) A fixed penalty notice may not be issued to a person in relation to a relevant offence arising out of a particular act or omission if—
- (a) a fixed penalty notice has previously been issued to the person (and not withdrawn) in relation to the same relevant offence arising out of the same act or omission, or
  - (b) criminal proceedings—
    - (i) have been brought against the person for the same relevant offence arising out of the same act or omission, or
    - (ii) cannot, because of the expiry of relevant time limits for prosecution, any longer competently be brought against the person for the same relevant offence arising out of the same act or omission.

- (2) A fixed penalty notice issued in contravention of subsection (1) is of no effect (and, accordingly, the appropriate enforcement authority must repay any amount paid in respect of the notice).

#### **40      Withdrawal of a fixed penalty notice**

- (1) An authorised officer of the appropriate enforcement authority may withdraw a fixed penalty notice issued by an authorised officer of the authority.
- (2) A fixed penalty notice—
- (a) may be withdrawn at any time before payment is made in accordance with the notice, and
  - (b) is withdrawn by the issuing of a notice in writing to that effect to the person to whom the fixed penalty notice was issued.
- (3) Where a fixed penalty notice is withdrawn, it is to be treated as if it had never been issued.

#### **41      Income from fixed penalties to be paid to the Scottish Ministers**

- (1) Sums received by enforcement authorities in response to fixed penalty notices are to be paid over to the Scottish Ministers.
- (2) Payments by an enforcement authority under subsection (1) are to be made at such times and by such methods as the Scottish Ministers may determine.

#### *Compliance notices*

#### **42      Compliance notices**

- (1) An authorised officer of the appropriate enforcement authority may issue to a person a compliance notice in relation to a relevant offence.
- (2) A “compliance notice” is a notice requiring the person to whom it is issued to take steps to ensure that the person ceases to commit a relevant offence.
- (3) An authorised officer may issue a compliance notice to a person in relation to a relevant offence only if the officer is satisfied to the specified standard that the person has committed the offence.

#### **43      Content and form of a compliance notice**

- (1) A compliance notice must include the following information—
- (a) a statement of the grounds for issuing the notice, including a statement of—
    - (i) the relevant offence that is alleged to have been committed, and
    - (ii) the act or omission giving rising to the offence,
  - (b) details of the steps that are required to be taken to ensure that the person to whom the notice is issued ceases to commit the relevant offence,
  - (c) the date of issue of the notice,
  - (d) the period of time within which the required steps are to be taken,

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- (e) information about the person to whom, and as to how and by when, any representations about the notice may be made,
  - (f) information about the right of appeal, including the period of time within which an appeal may be made,
  - (g) an explanation of the effect of complying with the requirements of the notice and of the consequences of failure to comply with those requirements.
- (2) The reference in subsection (1)(d) to the period of time within which the required steps are to be taken is a reference to such period, beginning with the date on which the notice was issued, as the authorised officer issuing the notice may determine.
- (3) That period must not be less than the specified period.
- (4) The Scottish Ministers may by regulations make further provision about the form and content of compliance notices including, in particular—
- (a) provision about the form and content of any of the information required to be included under subsection (1),
  - (b) provision about other information that is to be included in addition to that required under subsection (1).

#### **44 Failure to comply with a compliance notice**

- (1) If a person to whom a compliance notice has been issued fails to comply with the notice, the person commits an offence.
- (2) Where a person to whom a compliance notice has been issued fails to take any step required by the notice, the person does not, by reason of that failure, commit an offence under subsection (1) if—
- (a) the person takes other steps to ensure that the person ceases to commit the relevant offence in respect of which the notice was issued, and
  - (b) an authorised officer of the appropriate enforcement authority notifies the person in writing that those steps are acceptable for the purposes of complying with the notice.
- (3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **45 Effect of a compliance notice on criminal proceedings**

- (1) Where a compliance notice is issued to a person in relation to a relevant offence—
- (a) no criminal proceedings for the relevant offence may be brought against the person in respect of the relevant act or omission before the end of the compliance period, and
  - (b) if the person—
    - (i) complies with the requirements of the notice, or
    - (ii) though failing to comply, does not, by virtue of subsection (2) of section 44, commit an offence under subsection (1) of that section in relation to the notice,
 the person may not at any time be convicted of the relevant offence in respect of the relevant act or omission.
- (2) In subsection (1), “the relevant act or omission” means the act or omission—

- (a) constituting the relevant offence, and
- (b) by reason of which the compliance notice is issued.

#### **46 Restrictions on issuing of a compliance notice**

- (1) A compliance notice may not be issued to a person in relation to a relevant offence arising out of a particular act or omission if—
  - (a) a compliance notice has previously been issued to the person (and not withdrawn) in relation to the same relevant offence arising out of the same act or omission, or
  - (b) criminal proceedings have been brought against the person for the same relevant offence arising out of the same act or omission.
- (2) A compliance notice issued in contravention of subsection (1) is of no effect.

#### **47 Withdrawal of a compliance notice**

- (1) An authorised officer of the appropriate enforcement authority may withdraw a compliance notice issued by an authorised officer of the authority.
- (2) A compliance notice—
  - (a) may be withdrawn at any time before completion of the steps that are to be taken to comply with the requirements of the notice, and
  - (b) is withdrawn by the issuing of a notice in writing to that effect to the person to whom the compliance notice was issued.
- (3) Where a compliance notice is withdrawn, it is to be treated as if it had never been issued.

#### **48 Appeal against a compliance notice**

- (1) A person to whom a compliance notice has been issued may, before the expiry of the relevant period, appeal to a sheriff against the decision to issue the notice.
- (2) An appeal is to be made by way of summary application.
- (3) In subsection (1), the “relevant period” means—
  - (a) the period of one month beginning with the date of issue of the compliance notice, or
  - (b) the compliance period,whichever expires earlier.
- (4) In an appeal under this section, the sheriff may—
  - (a) cancel the compliance notice, or
  - (b) affirm the notice, either with or without modifications.
- (5) Where an appeal is made under this section, the compliance period is suspended for the period during which the appeal is pending.
- (6) For the purposes of subsection (5), the appeal is pending until it is finally determined or is withdrawn.

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### General

#### 49 Power to make supplementary etc. provision

- (1) The Scottish Ministers may by regulations make such supplementary, incidental or consequential provision as they consider appropriate in connection with fixed penalty notices and compliance notices and the carrying out by enforcement authorities and their authorised officers of functions under this Part.
- (2) Regulations under subsection (1) may, in particular, include provision—
  - (a) facilitating, prohibiting or restricting—
    - (i) the issuing of a fixed penalty notice or compliance notice in respect of a relevant offence arising out of an act or omission in cases where another sanction has been issued or imposed in respect of the same act or omission,
    - (ii) the issuing or imposing of another sanction in respect of an act or omission in cases where a fixed penalty notice or compliance notice has been issued in respect of a relevant offence arising out of the same act or omission,
  - (b) for early payment discounts in relation to fixed penalty notices,
  - (c) applying with modifications, or making provision equivalent to, any of the following provisions of the 1990 Act—
    - (i) section 20 (offences due to fault of another person),
    - (ii) section 21 (defence of due diligence),
    - (iii) section 30(8) (documentary evidence in proceedings for offences),
    - (iv) section 32 (powers of entry),
    - (v) section 33 (obstruction etc. of officers),
    - (vi) section 34 (time limit for prosecutions),
    - (vii) section 36 (offences by bodies corporate),
    - (viii) section 36A (offences by partnerships),
    - (ix) section 40 (power to issue codes of practice),
    - (x) section 45 (regulations as to charges),
    - (xi) section 49(3) to (5) (authentication of documents),
    - (xii) section 50 (service of documents).
- (3) Regulations under subsection (1) containing provision referred to in subsection (2)
  - (a) may also make such modifications of sections 38 and 45 as the Scottish Ministers consider necessary or expedient in relation to the case mentioned in subsection (4).
- (4) That case is where, in consequence of the provision, a person has been issued with both a fixed penalty notice and a compliance notice in relation to the same relevant offence arising out of the same act or omission.
- (5) But the provision which may be made by virtue of subsection (3) does not include provision which has the effect that the person may still be convicted of the offence if the person both—
  - (a) makes payment in accordance with the fixed penalty notice, and
  - (b) complies with the requirements of the compliance notice or though failing to comply, does not, by virtue of subsection (2) of section 44, commit an offence under subsection (1) of that section in relation to the notice.

- (6) In subsection (2)(a), “another sanction” means—
- (a) a fixed penalty notice (in relation to a compliance notice),
  - (b) a compliance notice (in relation to fixed penalty notice),
  - (c) an improvement notice under section 10 of the 1990 Act,
  - (d) an emergency prohibition notice or an emergency prohibition order under section 12 of the 1990 Act, and
  - (e) an emergency control order under section 13 of the 1990 Act.
- (7) The Scottish Ministers may by regulations modify subsection (6).

## **50 Regulations**

- (1) Before making any regulations under this Part, the Scottish Ministers must—
- (a) have regard to any relevant advice given by Food Standards Scotland, and
  - (b) consult such persons as appear to them to be representative of interests likely to be substantially affected by the regulations.
- (2) If it appears to the Scottish Ministers that Food Standards Scotland has consulted any person that the Scottish Ministers are required to consult under subsection (1)(b), the Scottish Ministers may treat that consultation as being effective for the purposes of that subsection as if undertaken by them.
- (3) Subsection (1)(b) does not apply in any case in which consultation is required by Article 9 of Regulation (EC) No. 178/2002.

## **51 Lord Advocate’s guidance**

- (1) The Lord Advocate may issue guidance to enforcement authorities about the exercise by them, and their authorised officers, of functions under this Part in relation to fixed penalty notices and compliance notices.
- (2) The Lord Advocate must publish any such guidance (in such manner as the Lord Advocate considers appropriate).
- (3) Subsection (2) does not apply to the extent that the Lord Advocate considers that publication would, or would be likely to, prejudice—
- (a) the effective exercise of the functions of enforcement authorities, or their authorised officers, under this Part,
  - (b) the prevention or detection of crime,
  - (c) the apprehension or prosecution of offenders, or
  - (d) the administration of justice.
- (4) Enforcement authorities must comply, and ensure that their authorised officers comply, with such guidance in exercising those functions.
- (5) The power in subsection (1) includes power to issue revised guidance (and references in this section to guidance are to be construed accordingly).

## **52 Interpretation of Part**

In this Part—

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“appropriate enforcement authority”, in relation to a relevant offence, means the enforcement authority for the particular enactment under which the offence arises,  
“authorised officer”, in relation to an enforcement authority, means a person (whether or not an officer of the authority) who is authorised by the authority in writing, either generally or specifically, for the purposes of this Part,  
“compliance notice” has the meaning given in section 42(2),  
“compliance period”, in relation to a compliance notice, means the period stated in the notice in accordance with section 43(1)(d),  
“fixed penalty notice” has the meaning given in section 36(2),  
“payment period”, in relation to a fixed penalty notice, means the period stated in the notice in accordance with section 37(1)(e),  
“relevant offence” means a specified offence under food legislation,  
“specified” means specified in regulations made by the Scottish Ministers.