

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.

Section 37: Content and form of fixed penalty notice

47. This section describes the information which must be included in a fixed penalty notice, and gives the Scottish Ministers power to make regulations to set the period of time within which payment is to be made, and to make any further provisions about the form and content of the notice by regulations.

Section 38: Effect of fixed penalty notice on criminal proceedings

48. Criminal proceedings for a relevant offence cannot be initiated if a fixed penalty notice has been issued and is still in force. If the person to whom the notice is issued makes payment in accordance with the notice then that person may not be convicted of a relevant offence in respect of the relevant act or omission.

Section 41: Income from fixed penalties to be paid to the Scottish Ministers

49. This section states that sums received by enforcement authorities for payment of fixed penalty notices must be paid over to the Scottish Ministers. This will ensure that enforcement authorities are not seen to be using fixed penalty notices to pay for services they provide.

Section 42: Compliance notices

50. This section enables authorised officers of enforcement authorities to issue compliance notices in relation to a relevant offence. The notice will stipulate steps that need to be taken to rectify the offence.
51. 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. As with fixed penalty notices, the Scottish Ministers will by regulation set what the specified standard of proof will be for a relevant offence – i.e. beyond reasonable doubt or on the balance of probability etc. In practice, a compliance notice could be issued for minor offences where either a fixed penalty notice or a report to the Procurator Fiscal Service would be disproportionate to the offence.
52. Under section 49 of the Act, the Scottish Ministers can also make supplementary, incidental or consequential provisions to the compliance notice scheme by regulations.
53. Setting 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 compliance notices. Enforcement authorities must comply with that guidance.

Section 43: Content and form of compliance notice

54. This section describes what information needs to be contained in a compliance notice, including details on a right of appeal and the consequences for failure to comply with the notice. Scottish Ministers have a power to make any further provisions about the form and content of the notice by regulations.

Section 44: Failure to comply with a compliance notice

55. It is an offence to fail to comply with a compliance notice and within the compliance period. The penalty on summary conviction is a fine not exceeding level 5 (£5,000) on the standard scale.

Section 45: Effect of compliance notice on criminal proceedings

56. Criminal proceedings for the relevant offence cannot be initiated, and if the person on whom the notice is served complies with the notice, then that person may not be convicted in respect of the relevant act or omission, if a compliance notice has been issued and is still in force.

Section 49: Power to make supplementary etc. provision

57. This section gives the Scottish Ministers power to make supplementary, incidental or consequential provision for the administrative sanctions regime, by regulations. This covers both fixed penalty and compliance notices as well as how enforcement authorities carry out their functions under Part 3 of the Act. This is a general power, but the section gives particular reference to regulations for facilitating, prohibiting or restricting the use of sanctions where another sanction has already been imposed or issued for the same act or omission. These sanctions could be fixed penalty notices, compliance notices or another sanction.

58. The section also refers to regulations providing for early payment discounts in relation to fixed penalty notices. The section also provides for regulations being made to modify certain provisions of the 1990 Act. These include modifying provisions on offences and defences, on powers of entry and powers to issue codes of practice. This section in particular also provides for the effect of fixed penalty notices and compliance notices on criminal proceedings.

Section 51: Lord Advocate's guidance

59. This section gives the Lord Advocate, as head of the Crown Office and Procurator Fiscal Service, the right to issue guidance to enforcement authorities about how they exercise their functions with regards to fixed penalty notices and compliance notices. The content of the guidance will be a matter for the Lord Advocate, but it may, for example, set conditions for certain offences to be treated administratively. Enforcement authorities must comply with this guidance. The section also requires the Lord Advocate to publish such guidance, unless the Lord Advocate considers that publishing it would prejudice those activities specified in subsection (3).

Section 52: Interpretation of Part 3

60. **Part 3** introduces administrative sanctions; this section describes the key terms used. This section includes a power to make regulations to specify what "relevant offences" are in respect of fixed penalty and compliance notices. Determining what constitutes a relevant offence by regulation rather than on the face of the Act allows greater flexibility to amend the list of offences over time and following further consultation. This means not having to amend primary legislation if another type of offence is identified or where particular offences are to be treated differently, as may be the case following Lord Advocate's guidance being issued from time to time under section 51 of the Act.