



2013 CHAPTER 10

Part 3

Marine protection

Fixed monetary penalties

Fixed monetary penalties

35.—(1) The Department may by order make provision to confer on the Department the power by notice to impose a fixed monetary penalty on a person in relation to an offence under section 32.

(2) Provision under this section may only confer such a power in relation to a case where the Department is satisfied beyond reasonable doubt that the person has committed the offence.

(3) For the purposes of this Part a “fixed monetary penalty” is a requirement to pay to the Department a penalty of a prescribed amount.

(4) The amount of the fixed monetary penalty that may be imposed in relation to an offence may not exceed level 1 on the standard scale.

(5) In this section “prescribed” means prescribed in an order made under this section.

Fixed monetary penalties: procedure

36.—(1) Provision under section 35 must secure the results in subsection (2).

(2) Those results are that—

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- (a) where the Department proposes to impose a fixed monetary penalty on a person, the Department must serve on that 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 prescribed 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 Department in relation to the proposed imposition of the fixed monetary penalty, and
 - (ii) the Department must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,
 - (d) where the Department decides 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 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) the effect of payment of the sum referred to in subsection (2)(b),
 - (c) the right to make representations and objections,
 - (d) the circumstances in which the Department may not impose the fixed monetary penalty,
 - (e) 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 is received, and
 - (f) 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 is received.
- (4) Provision pursuant to subsection (2)(c)(ii)—
- (a) must secure that the Department may not decide to impose a fixed monetary penalty on a person where the Department is 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 Department may not decide to impose a fixed monetary penalty.
- (5) To comply with this subsection the final notice referred to in subsection (2)
- (d) must include information as to—

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- (a) the grounds for imposing the penalty,
- (b) how payment may be made,
- (c) the period within which payment must be made,
- (d) any early payment discounts or late payment penalties,
- (e) rights of appeal, and
- (f) the consequences of non-payment.

(6) Provision pursuant to subsection (2)(e) must secure that the grounds on which a person may appeal against a decision of the Department include the following—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unreasonable.

(7) In this section “prescribed” means prescribed in an order made under section 35.

Fixed monetary penalties: further provision

37 Schedule 2 (which makes further provision about fixed monetary penalties) has effect.

Changes to legislation:

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