

MARINE AND COASTAL ACCESS ACT 2009

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

Schedule 10: Further Provision about Fixed Monetary Penalties under Section 142

952. This Schedule sets out the further provisions about fixed monetary penalties. *Paragraph 1* provides that an order allowing the imposition of fixed monetary penalties must provide that, where a fixed monetary penalty is imposed on a person, that person must not also be liable to criminal prosecution in respect of the relevant offence.
953. *Paragraph 2* states that such an order may provide for discounts for early payment or interest for late payment of the original penalty. The total amount of any late payment penalty must not exceed the total amount of the penalty imposed.
954. This paragraph also provides for the enforcement of unpaid penalties (and any interest or late payment charges) through the civil courts.
955. *Paragraph 3* makes provision for appeals.
956. *Paragraph 4* requires the “appropriate authority” (the Secretary of State or the Welsh Ministers), when it proposes to make an order allowing the use of fixed monetary penalties, to consult the enforcement authority and such other persons as the authority considers appropriate. The relevant authority will also be required to consult relevant organisations which it considers represent the interests of persons substantially affected by the proposals.
957. If, as a result of this consultation, there are substantial changes to any part of the proposals, the authority will be required to undertake such further consultation on the revised proposals as it considers appropriate.
958. *Paragraph 5* provides that an order enabling the imposition of fixed monetary penalties must also require that the enforcement authority publishes guidance in relation to the use of these powers (“Penalty Guidance”). The enforcement authority must revise the Penalty Guidance where appropriate and must consult specific persons before publishing or revising the Penalty Guidance. The order must also state that the enforcement authority should have regard to the Penalty Guidance when exercising its functions.
959. The Penalty Guidance must contain information about the circumstances in which a sanction is likely to be imposed, the amount of the penalty and the person’s right of appeal.
960. *Paragraph 6* requires that where the Secretary of State or the Welsh Ministers make an order enabling the imposition of fixed monetary penalties in relation to an offence, the enforcement authority must prepare and publish guidance regarding the manner in which the offence is enforced (“Enforcement Policy”). The Enforcement Policy must set out the sanctions for committing an offence, the action the enforcement authority may take and the circumstances in which the enforcement authority is likely to take

*These notes refer to the Marine and Coastal Access Act 2009
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such action. The Enforcement Policy, in contrast to Penalty Guidance, is focused on how particular offences are enforced.

961. *Paragraph 7* provides that any order must require an enforcement authority to publish information concerning its use of those powers in cases where either a fixed monetary penalty has been imposed (but not overturned on appeal) or liability to a penalty has been discharged by payment of a prescribed sum.
962. *Paragraph 8* provides that all payments made in relation to civil sanctions are to be paid into either the Consolidated Fund or the Welsh Consolidated Fund as appropriate.
963. *Paragraph 9* permits those persons listed in *sub-paragraph (2)* to disclose information to an enforcement authority that has had the new enforcement powers conferred on it. Information may only be disclosed where the person listed has an enforcement function in relation to offences and for the purposes of the enforcement authority exercising one of the new powers. The police will not have access to the new enforcement powers but if, for example, they have begun a criminal investigation but think that it no longer merits a criminal prosecution, this provision would allow them to pass information to the enforcement authority so that it could determine whether to issue an alternative sanction.