
STATUTORY INSTRUMENTS

2011 No. 924 (W.133)

**ENVIRONMENTAL PROTECTION, WALES
MARINE POLLUTION, WALES
TRIBUNALS AND INQUIRIES, WALES**

The Marine Licensing (Civil Sanctions) (Wales) Order 2011

Made - - - - 22 March 2011

Coming into force - - 6 April 2011

The Welsh Ministers, as the appropriate licensing authority under section 113(4)(b) of the Marine and Coastal Access Act 2009⁽¹⁾, make the following Order in exercise of the powers conferred by sections 93, 95 and 316(1)(b) of, and paragraphs 2, 3, 4, 5, 6, 7, 9(1) and 11(1) and (4) of Schedule 7 to, that Act.

The Welsh Ministers have carried out a consultation in accordance with paragraph 8 of Schedule 7 to that Act.

In accordance with section 316(6)(b) and (7)(d) of that Act, a draft of this Order has been laid before, and approved by a resolution of, the National Assembly for Wales.

PART 1

Introductory provisions

Title and commencement

- 1.—(1) The title of this Order is the Marine Licensing (Civil Sanctions) (Wales) Order 2011.
- (2) This Order comes into force on 6 April 2011.

Application

2. This Order applies in relation to any licensable marine activity for which the Welsh Ministers are—
 - (a) the appropriate licensing authority⁽²⁾ (and the reference in article 25(2) to “the licensing authority” is to be read accordingly);

⁽¹⁾ 2009 c. 23.

⁽²⁾ By virtue of section 113(4)(b) of the Marine and Coastal Access Act 2009, the Welsh Ministers are the appropriate licensing authority as respects anything done in the course of carrying on licensable marine activities in relation to Wales

- (b) an enforcement authority⁽³⁾ (and references in this Order to “the enforcement authority” are to be read accordingly).

Interpretation

3. In this Order—

“the Act” (“*y Ddeddf*”) means the Marine and Coastal Access Act 2009;

“civil sanction” (“*sancsiwn sifil*”) means a fixed monetary penalty or a variable monetary penalty⁽⁴⁾;

“final notice” (“*hysbysiad terfynol*”)—

(a) in relation to a fixed monetary penalty, has the meaning given by article 8(3);

(b) in relation to a variable monetary penalty, has the meaning given by article 17(4);

“notice of intent” (“*hysbysiad o fwriad*”)—

(a) in relation to a fixed monetary penalty, has the meaning given by article 5(1);

(b) in relation to a variable monetary penalty, has the meaning given by article 14(1).

PART 2

Fixed monetary penalties

Power to impose fixed monetary penalty

4.—(1) The enforcement authority may by notice impose a fixed monetary penalty on a person in relation to an offence under section 85(1) of the Act (breach of requirement for, or conditions of, a licence).

(2) But before doing so, the enforcement authority must be satisfied beyond reasonable doubt that the person has committed the offence.

(3) The amount of the fixed monetary penalty is £100 for an individual or £300 in any other case.

Notice of intent

5.—(1) Where the enforcement authority proposes to impose a fixed monetary penalty on a person, it must serve on that person a notice of what is proposed (a “notice of intent”).

(2) The notice must offer the person the opportunity to discharge the person’s liability for the fixed monetary penalty by payment of 50% of the amount of the penalty within the period of 28 days beginning with the day on which the notice of intent is received.

(3) The notice must also include information as to—

(a) the grounds for the proposal to impose the fixed monetary penalty;

(b) the amount of the proposed fixed monetary penalty;

(c) the effect of payment of the sum referred to in article 6;

(d) the right to make representations and objections;

and the Welsh inshore region other than activities for which the Secretary of State is the appropriate licensing authority by virtue of sections 113(4)(a) and (5) of that Act. *See* section 322(1) for the definition of the Welsh inshore region.

(3) The Welsh Ministers are an enforcement authority for the areas for which the Welsh Ministers are the appropriate licensing authority for the purposes of this Order (*see* section 114(2) of the Marine and Coastal Access Act 2009).

(4) *See* section 115(1) of the Act for a definition of these terms.

- (e) the circumstances in which the enforcement authority may not impose the fixed monetary penalty;
 - (f) the period, referred to in article 6, within which liability to the fixed monetary penalty may be discharged;
 - (g) the period, referred to in article 7(1), within which representations and objections may be made.
- (4) But the enforcement authority may not serve a notice of intent on a person in relation to any act or omission where—
- (a) a variable monetary penalty has been imposed on that person in relation to that act or omission;
 - (b) a stop notice(5) has been served on that person in relation to that act or omission.

Discharge of liability

6. A person who receives a notice of intent may discharge liability for the fixed monetary penalty by paying to the enforcement authority 50% of the amount of the penalty within the period of 28 days beginning with the day on which the notice of intent is received.

Representations and objections

7.—(1) A person on whom a notice of intent is served may, within the period of 28 days beginning with the day on which the notice of intent is received, make written representations and objections to the enforcement authority in relation to the proposed imposition of the fixed monetary penalty.

- (2) This article does not apply where a person has discharged liability under article 6.

Imposition of fixed monetary penalty

8.—(1) The enforcement authority must after the end of the period for making representations and objections decide whether to impose the fixed monetary penalty.

(2) The enforcement authority must not decide to impose a fixed monetary penalty on a person where the authority 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.

(3) Where the enforcement authority decides to impose the fixed monetary penalty, the notice imposing it (the “final notice”) must include information as to—

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

- (4) This article does not apply where a person has discharged liability under article 6.

(5) This article is subject to article 30 (amending or withdrawing final notices to rescind or reduce a penalty or to correct errors).

(5) See section 115(1) of the Act for a definition of this term.

Discount for early payment

9. A person who makes representations or objections in accordance with article 7 may discharge liability for the fixed monetary penalty by paying to the enforcement authority 50% of the amount of the penalty within the period of 28 days beginning with the day on which the final notice is received.

Payment dates and late payment penalties

10.—(1) Where no appeal is brought against the decision to impose a fixed monetary penalty, the penalty must be paid within the period of 56 days beginning with the day on which the final notice is received.

(2) Where paragraph (1) applies, if a fixed monetary penalty is not paid within the period of 56 days, the person liable to pay the fixed monetary penalty is also liable to pay to the enforcement authority a late payment penalty of 50% of the amount of the fixed monetary penalty.

(3) Where an appeal is brought but a fixed monetary penalty remains payable following that appeal, the penalty must be paid within the period of 28 days beginning with the day the appeal was determined.

(4) Where paragraph (3) applies, if a fixed monetary penalty is not paid within the period of 28 days, the person liable to pay the fixed monetary penalty is also liable to pay to the enforcement authority a late payment penalty of 50% of the amount of the fixed monetary penalty.

Restrictions on other sanctions

11.—(1) Where a notice of intent has been served on a person—

- (a) no criminal proceedings for the offence to which the notice relates may be instituted against the person in respect of the act or omission to which the notice relates before the end of the period of 28 days beginning with the day on which the notice of intent is received; and
- (b) if the person discharges liability for the fixed monetary penalty in accordance with article 6, the person may not at any time be convicted of the offence to which the notice of intent relates in relation to that act or omission.

(2) Where a fixed monetary penalty is imposed on a person—

- (a) that person may not at any time be convicted of the offence in relation to which the penalty was imposed in respect of the act or omission giving rise to the penalty;
- (b) the enforcement authority may not issue a compliance notice or a remediation notice⁽⁶⁾ to that person in respect of the act or omission giving rise to the penalty.

(3) The enforcement authority may not serve a stop notice on a person in relation to any act or omission where—

- (a) a fixed monetary penalty has been imposed on that person in relation to that act or omission; or
- (b) the person has discharged liability for a fixed monetary penalty in relation to that act or omission in accordance with article 6.

Appeals against fixed monetary penalties

12.—(1) The person on whom a fixed monetary penalty is imposed may appeal against the decision to impose it⁽⁷⁾.

(2) The grounds of appeal are—

⁽⁶⁾ See section 115(1) of the Act for a definition of these terms.

⁽⁷⁾ See article 28 for further provisions relating to appeals.

- (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;
- (d) any other reason permitted by the First-tier Tribunal.

PART 3

Variable monetary penalties

Power to impose variable monetary penalty

13.—(1) The enforcement authority may by notice impose a variable monetary penalty on a person in relation to—

- (a) an offence under section 85(1) of the Act (breach of requirement for, or conditions of, a licence);
- (b) an offence under section 89(1) of the Act (information);
- (c) an offence under section 92(3)(b) of the Act (failure to comply with a remediation notice).

(2) But before doing so, the enforcement authority must be satisfied beyond reasonable doubt that the person has committed the offence.

Notice of intent

14.—(1) Where the enforcement authority proposes to impose a variable monetary penalty on a person, the authority must serve on that person a notice (a “notice of intent”).

(2) The notice of intent must include information as to—

- (a) the grounds for the proposal to impose the variable monetary penalty;
- (b) the amount of the proposed variable monetary penalty;
- (c) the circumstances in which the enforcement authority may not impose the variable monetary penalty; and
- (d) the period, referred to in article 15, within which representations and objections may be made.

(3) But the enforcement authority may not serve a notice of intent on a person in relation to any act or omission where—

- (a) a fixed monetary penalty has been imposed on that person in relation to that act or omission; or
- (b) the person has discharged liability for a fixed monetary penalty in relation to that act or omission in accordance with article 6.

Representations and objections

15. A person on whom a notice of intent is served may, within the period of 28 days beginning with the day on which the notice of intent is received, make written representations and objections to the enforcement authority in relation to the proposed imposition of the penalty.

Undertakings to benefit affected persons

16.—(1) A person on whom a notice of intent is served may offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any person affected by the offence.

(2) The enforcement authority may accept or reject such an undertaking.

Imposition of variable monetary penalty

17.—(1) After the end of the period for making representations and objections, the enforcement authority must decide whether to impose a variable monetary penalty and, if so, the amount of the penalty.

(2) In so deciding, the enforcement authority must take into account any undertaking accepted under article 16(2).

(3) The enforcement authority must not decide to impose a variable monetary penalty on a person where the authority is satisfied that the person would not, by reason of any defence raised by that person, be liable to be convicted of the offence in relation to which the penalty is proposed to be imposed.

(4) Where the enforcement authority decides to impose a variable monetary penalty, the notice imposing it (the “final notice”) must include information as to—

- (a) the grounds for imposing the penalty;
- (b) the amount of the penalty;
- (c) how payment may be made;
- (d) the period within which payment must be made;
- (e) rights of appeal; and
- (f) the consequences of non-payment.

(5) This article is subject to article 30.

Payment dates

18.—(1) Where no appeal is brought against the decision to impose a variable monetary penalty, the penalty must be paid within the period of 56 days beginning with the day on which the final notice is received, or such later period as the enforcement authority may agree in writing.

(2) Where an appeal is brought but a variable monetary penalty remains payable following that appeal, the penalty must be paid within the period of 28 days beginning with the day the appeal is determined.

Restrictions on other sanctions

19. Where a variable monetary penalty is imposed on a person—

- (a) that person may not at any time be convicted of the offence in relation to which the penalty was imposed in respect of the act or omission giving rise to the penalty;
- (b) the enforcement authority may not issue a compliance notice to that person in respect of the act or omission giving rise to the penalty.

Appeals against variable monetary penalties

20.—(1) The person on whom a variable monetary penalty is imposed may appeal against the decision as to the imposition or amount of the penalty.

- (2) The grounds of appeal are—
- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the amount of the penalty is unreasonable;
 - (d) that the decision was unreasonable for any other reason;
 - (e) any other reason permitted by the First-tier Tribunal.

Enforcement costs recovery notices

21.—(1) The enforcement authority may by notice require a person on whom a variable monetary penalty is imposed to pay the costs incurred by the enforcement authority in relation to the imposition of the penalty up to the time of its imposition.

(2) The notice must specify the amount required to be paid.

(3) The person on whom the notice is served may require the enforcement authority to provide a detailed breakdown of the amount specified in the notice.

(4) The person required to pay costs is not liable to pay any costs shown by the person to have been unnecessarily incurred.

(5) In this article, “costs” include in particular—

- (a) investigation costs;
- (b) administration costs;
- (c) costs of obtaining expert advice (including legal advice).

Appeals against enforcement costs recovery notices

22. The person required under article 21 to pay costs may appeal against the decision—

- (a) to impose the requirement to pay costs;
- (b) as to the amount of those costs.

PART 4

Guidance and publication of enforcement action

Guidance as to use of civil sanctions

23.—(1) The enforcement authority must publish guidance about its use of civil sanctions.

(2) The guidance must contain information as to—

- (a) the circumstances in which a civil sanction is likely to be imposed;
- (b) the circumstances in which it may not be imposed;
- (c) in relation to a fixed monetary penalty—
 - (i) the amount of the penalty; and
 - (ii) how liability for the penalty may be discharged and the effect of discharge;
- (d) in relation to a variable monetary penalty, the matters likely to be taken into account by the enforcement authority in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance);
- (e) rights to make representations and objections; and

- (f) rights of appeal.
- (3) The enforcement authority must revise the guidance where appropriate.
- (4) The enforcement authority must consult such persons as it considers appropriate before publishing any guidance or revised guidance.
- (5) The enforcement authority must have regard to the guidance or revised guidance in exercising its functions.

Guidance as to requirement to pay costs

24. The enforcement authority must publish guidance about how it will exercise the power conferred by article 21.

Publication of enforcement action

- 25.**—(1) The enforcement authority must from time to time publish reports specifying—
- (a) the cases in which a civil sanction has been imposed (but this does not include cases where the sanction has been imposed but overturned on appeal);
 - (b) where the civil sanction is a fixed monetary penalty, the cases in which liability for the penalty has been discharged in accordance with article 6; and
 - (c) where the civil sanction is a variable monetary penalty, the cases in which an undertaking referred to in article 16 is accepted.
- (2) But paragraph (1) does not apply in cases where the licensing authority considers that it would be inappropriate to specify the information referred to in that paragraph.

PART 5

General provisions

Recovery of payments

- 26.**—(1) The enforcement authority may recover any civil sanction imposed under this Order, and any financial penalty for late payment payable under article 10, as a civil debt.
- (2) The enforcement authority may recover any civil sanction imposed under this Order, and any financial penalty for late payment payable under article 10, on the order of a court, as if payable under a court order.

Payment of certain discharge payments into Welsh Consolidated Fund

27. Where the enforcement authority receives any payment under article 6, the authority must pay it into the Welsh Consolidated Fund⁽⁸⁾.

Appeals — further provisions

28.—(1) Any appeal under this Order is to the First-tier Tribunal⁽⁹⁾.

⁽⁸⁾ Established under section 117 of the Government of Wales Act 2006 (c. 32) See also paragraph 12(2)(a) and (b) of Schedule 7 to the Marine and Coastal Access Act 2009 (c. 23), which requires any fixed monetary penalty, variable monetary penalty or other financial penalty for late payment payable under this Order to be paid into the Welsh Consolidated Fund.

⁽⁹⁾ Appeals are assigned to the General Regulatory Chamber of the First-tier Tribunal by virtue of article 3 of the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 (S.I. 2010/2655). The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976) sets out procedural rules relating to such appeals.

- (2) In any appeal the burden of proof is on the enforcement authority, and—
 - (a) where a question to be decided on the appeal is whether an offence has been committed, the enforcement authority must prove the commission of the offence beyond reasonable doubt;
 - (b) in respect of any other issue to be decided on the appeal, the First-tier Tribunal is to determine the standard of proof.
- (3) A notice which is the subject of an appeal, and any requirement in such a notice, is suspended pending determination of that appeal.
- (4) The First-tier Tribunal may—
 - (a) withdraw the requirement or notice;
 - (b) confirm the requirement or notice;
 - (c) vary the requirement or notice;
 - (d) take such steps as the enforcement authority could take in relation to the act or omission giving rise to the requirement or notice;
 - (e) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the enforcement authority.

Service of notices

29.—(1) Any notice that is required or authorised to be served on or given to a person under this Order may be served on or given to the person by any of the following methods—

- (a) personal delivery;
 - (b) addressing it to the person and leaving it at the appropriate address;
 - (c) addressing it to the person and sending it to that address by post;
 - (d) in a case where an address for service using electronic communications has been given by the person, sending it using electronic communications, in accordance with the condition set out in paragraph (4), to that person at that address.
- (2) In paragraph (1), “the appropriate address” means—
- (a) in the case of a body corporate, its registered or principal office;
 - (b) in the case of a firm, the principal office of the partnership;
 - (c) in the case of an unincorporated body or association, the principal office of the body or association;
 - (d) in any other case, the person’s usual or last known place of residence or last known place of business.
- (3) In the case of—
- (a) a company registered outside the United Kingdom,
 - (b) a firm carrying on business outside the United Kingdom, or
 - (c) an unincorporated body or association with offices outside the United Kingdom,

the references in paragraph (2) to its principal office include references to its principal office within the United Kingdom (if any).

- (4) The condition mentioned in paragraph (1)(d) is that the notice must be—
- (a) capable of being accessed by the person mentioned in that provision,
 - (b) legible in all material respects, and
 - (c) in a form sufficiently permanent to be used for subsequent reference.

(5) For the purposes of paragraph (4), “legible in all material respects” means that the information contained in the notice is available to that person to no lesser extent than it would be if served or given by means of a notice in printed form.

Amending or withdrawing final notices to rescind or reduce a penalty or to correct errors

- 30.**—(1) The enforcement authority may at any time after a final notice has been issued—
- (a) decide that a penalty imposed by the notice should be rescinded; or
 - (b) in the case of a variable monetary penalty, decide to reduce the amount of the penalty.
- (2) Where the enforcement authority decides under paragraph (1)(a) that a penalty should be rescinded—
- (a) it must give notice to the person on whom the penalty has been imposed, that the final notice is withdrawn and the penalty rescinded; or
 - (b) where the final notice also imposes a civil sanction to which a decision under that paragraph does not relate, the enforcement authority must serve on that person an amended final notice which rescinds the penalty to which the decision under that paragraph relates.
- (3) Where the enforcement authority decides under paragraph (1)(b) to reduce the amount of a penalty, it must serve an amended final notice to correct an error in the notice issued under article 8(3) or 17(4).
- (4) The enforcement authority may at any time serve an amended final notice to correct an error in the notice issued under article 8(3) or 17(4).

22 March 2011

Jane Davidson
Minister for Environment, Sustainability and
Housing, one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers on the Welsh Ministers, as an enforcement authority under section 114(2) of the Marine and Coastal Access Act 2009 (“the Act”), powers to impose fixed monetary penalties and variable monetary penalties in relation to certain offences under the Act.

Part 1 of this Order contains introductory provisions and definitions (*see* section 115(1) of the Act for further relevant definitions).

Part 2 contains provisions relating to fixed monetary penalties. Article 4 confers power on the enforcement authority to impose such a penalty in relation to an offence under section 85(1) of the Act (breach of requirement for, or conditions of, a licence). Article 5 deals with notices of intent and article 6 provides for making payments to discharge liability where such notices have been served. Articles 7 and 8 deal with making representations and objections and giving final notices imposing penalties. Articles 9 and 10 make provision for early payment discount, payment dates and late payment penalties. Article 11 contains provisions restricting the combination of a fixed monetary penalty with other sanctions available under the Act, and article 12 sets out rights of appeal.

Part 3 contains provisions relating to variable monetary penalties. Article 13 confers power on the enforcement authority to impose a variable monetary penalty in relation to offences under sections 85(1) (breach of condition of, or requirement for, a licence), 89(1) (information) and 92(3)(b) (failure to comply with a remediation notice) of the Act. Article 14 deals with notices of intent, article 15 deals with making representations and objections, and article 16 contains provisions relating to offering and accepting undertakings. There are provisions for giving final notices imposing penalties (article 17), setting out payment dates (article 18) and restricting the combination of a variable monetary penalty with other sanctions (article 19). Article 20 sets out rights of appeal against the imposition of a variable monetary penalty. Article 21 confers on the enforcement authority a power to require a person on whom a variable monetary penalty is imposed to pay costs incurred by the enforcement authority, and article 22 gives a right of appeal against a decision to impose costs.

Part 4 sets out requirements relating to publication of guidance (articles 23 and 24) and enforcement action (article 25). Paragraph 10 of Schedule 7 to the Act sets out further publication requirements for guidance relating to the enforcement of offences for which civil sanctions can be imposed. Copies of the guidance referred to are available from the Marine Consents Unit of the Welsh Assembly Government or from the Welsh Assembly Government website, at the address below.

Part 5 contains general provisions. Articles 26 and 27 deal with the recovery of payments and for paying certain monies received into the Welsh Consolidated Fund. Article 28 contains further provisions relating to appeals (all appeals are to the First-tier Tribunal). Article 29 contains provisions relating to the service of notices, and article 30 contains provisions relating to the withdrawal or amendment of final notices or reduction of the amount payable.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Marine Consents Unit, Welsh Assembly Government, Cathays Park, Cardiff, CF10 3NQ or at the Welsh Assembly Government website at www.wales.gov.uk.