

MARINE (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 4 – Marine Licensing

Civil sanctions

Section 46 - Fixed monetary penalties

69. [Section 46](#) allows the Scottish Ministers to make provision by order about the imposition of fixed monetary penalties.
70. The Scottish Ministers may only impose a fixed monetary penalty on a person when they are satisfied beyond reasonable doubt that the person has committed an offence under Part 4.
71. The amount of any fixed monetary penalty will be specified by order. Different provision may be made for different cases.

Section 47 - Fixed monetary penalties: procedure

72. [Section 47](#) details the minimum requirements that the Scottish Ministers must ensure are included within any fixed monetary penalty regime. In particular, when imposing a penalty Scottish Ministers must be required to issue a notice of intent to the person setting out the information specified in [section 47\(3\)](#) and providing the person with an opportunity to discharge their liability by payment of a prescribed sum. Alternatively a person is to be entitled to make representations, in accordance with [section 47\(2\)\(c\)\(i\)](#). Where the Scottish Ministers decide to impose a fixed monetary penalty, they must issue a final notice setting out the information specified in [section 47\(5\)](#). A person on whom a final notice is served has a right of appeal to the sheriff. [Section 47\(6\)](#) sets out the minimum grounds for appeal that must be available.

Section 48 - Variable monetary penalties

73. [Section 48](#) allows the Scottish Ministers to make provision by order concerning the imposition of variable monetary penalties.
74. The Scottish Ministers may only impose a variable monetary penalty when satisfied beyond reasonable doubt that the person has committed an offence under Part 4.
75. The Scottish Ministers will determine the amount of any variable monetary penalty on a case-by-case basis.

Section 49 - Variable monetary penalties: procedure

76. [Section 49](#) details the minimum requirements that the Scottish Ministers must ensure are included within any variable monetary penalty regime. In particular, when imposing the penalty the Scottish Ministers are required to issue a notice of intent to the person setting out the information specified in [section 49\(3\)](#) and providing the person with an

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opportunity to discharge their liability by payment or an undertaking to take action (for example, remediation works or another kind of activity). Alternatively a person can make representations against the imposition of the notice. Where the Scottish Ministers decide to impose a variable monetary penalty, they must issue a final notice setting out the information specified in section 49(6). A person on whom a final notice is served has a right of appeal to the sheriff. Section 49(7) sets out the minimum grounds for appeal that must be available.

Section 50 - Further provision about civil sanctions

77. **Section 50** introduces schedule 2 which sets out further provision in relation to the civil sanctions that may be imposed under Part 4.