

Status: Point in time view as at 09/11/2020.

Changes to legislation: There are currently no known outstanding effects for the Marine (Scotland) Act 2010, SCHEDULE 2. (See end of Document for details)

SCHEDULE 2

(introduced by section 50)

FURTHER PROVISION ABOUT CIVIL SANCTIONS UNDER PART 4 (MARINE LICENSING)

Modifications etc. (not altering text)

- C1** Sch. 2 applied (9.11.2020) by [The Marine Licensing \(Exempted Activities\) \(Scottish Inshore Region\) Amendment Order 2020 \(S.S.I. 2020/316\)](#), arts. 1, 14

Interpretation

- [^{F1}1 In this schedule—
- “ civil sanction ” means a fixed monetary penalty or a variable monetary penalty,
 - “ fixed penalty notice ” means a fixed penalty notice under section 25(1) of the Aquaculture and Fisheries (Scotland) Act 2007,
 - “ fixed penalty officer ” has the meaning given in section 25(3) of that Act.]

Textual Amendments

- F1** Sch. 2 para. 1 substituted (16.9.2013) by [Aquaculture and Fisheries \(Scotland\) Act 2013 \(asp 7\)](#), ss. 61(2), 66(2) (with s. 65); S.S.I. 2013/249, art. 2

Fixed monetary penalties: other sanctions

- 2 (1) Provision under section 46 must secure that, in a case where a notice of intent referred to in section 47(2)(a) is 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 in which the person may discharge liability to the fixed monetary penalty pursuant to section 47(2)(b),
 - (b) if the person so discharges liability, the person may not at any time be convicted of the offence to which the notice relates in relation to that act or omission.
- (2) Provision under section 46 must also secure that, in a case where a fixed monetary penalty is imposed on a person—
- (a) the person may not at any time be convicted of the offence in relation to which the penalty is imposed in respect of the act or omission giving rise to the penalty,
 - (b) the Scottish Ministers may not issue a compliance notice or a remediation notice to that person in respect of the act or omission giving rise to the penalty.
 - [^{F2}(c) a fixed penalty officer may not issue a fixed penalty notice to the person in respect of the act or omission giving rise to the fixed monetary penalty.]

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Textual Amendments

- F2** Sch. 2 para. 2(2)(c) inserted (16.9.2013) by [Aquaculture and Fisheries \(Scotland\) Act 2013 \(asp 7\)](#), **ss. 61(3), 66(2)** (with s. 65); S.S.I. 2013/249, art. 2

Commencement Information

- I1** Sch. 2 para. 2 in force at 6.4.2011 by S.S.I. 2011/58, **art. 3(a)**

Variable monetary penalties: other sanctions

- 3 Provision under section 48 must secure that, in a case where a variable monetary penalty is imposed on a person—
- (a) the person may not at any time be convicted of the offence in relation to which the penalty is imposed in respect of the act or omission giving rise to the penalty,
 - (b) the Scottish Ministers may not issue a compliance notice to the person in respect of the act or omission giving rise to the penalty.
- [^{F3}(c) a fixed penalty officer may not issue a fixed penalty notice to the person in respect of the act or omission giving rise to the variable monetary penalty.]

Textual Amendments

- F3** Sch. 2 para. 3(c) inserted (16.9.2013) by [Aquaculture and Fisheries \(Scotland\) Act 2013 \(asp 7\)](#), **ss. 61(4), 66(2)** (with s. 65); S.S.I. 2013/249, art. 2

Commencement Information

- I2** Sch. 2 para. 3 in force at 6.4.2011 by S.S.I. 2011/58, **art. 3(a)**

Combination of sanctions

- 4 (1) Provision may not be made under section 46 and section 48 in relation to the same offence unless it secures that—
- (a) the Scottish Ministers may not serve a notice of intent referred to in section 47(2)(a) on a person in relation to any act or omission where a variable monetary penalty has been imposed on the person in relation to the act or omission,
 - (b) the Scottish Ministers may not serve a notice of intent referred to in section 49(2)(a) on a person in relation to any act or omission where—
 - (i) a fixed monetary penalty has been imposed on the person in relation to the act or omission, or
 - (ii) the person has discharged liability to a fixed monetary penalty in relation to that act or omission pursuant to section 47(2)(b).
- (2) Provision under section 46 which results in the Scottish Ministers having power to impose a fixed monetary penalty or to issue a stop notice in relation to the same offence must secure that—
- (a) the Scottish Ministers may not serve a notice of intent referred to in section 47(2)(a) on a person in relation to any act or omission where a stop notice has been served on the person in relation to the act or omission,

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- (b) the Scottish Ministers may not serve a stop notice on a person in relation to any act or omission where—
- (i) a fixed monetary penalty has been imposed on the person in relation to the act or omission, or
 - (ii) the person has discharged liability to a fixed monetary penalty in relation to the act or omission pursuant to section 47(2)(b).

Commencement Information

I3 Sch. 2 para. 4 in force at 6.4.2011 by [S.S.I. 2011/58](#), [art. 3\(a\)](#)

[^{F4}Civil sanctions and fixed penalty notices

Textual Amendments

F4 Sch. 2 para. 4A and cross-heading inserted (16.9.2013) by [Aquaculture and Fisheries \(Scotland\) Act 2013 \(asp 7\)](#), [ss. 61\(5\), 66\(2\)](#) (with s. 65); [S.S.I. 2013/249](#), [art. 2](#)

- 4A (1) Provision under section 46 must secure that, in a case where a fixed penalty notice is issued to a person in respect of a relevant offence, the Scottish Ministers may not—
- (a) serve on the person a notice of intent referred to in section 47(2)(a) in relation to an act or omission constituting the relevant offence, or
 - (b) impose a fixed monetary penalty on the person in relation to an act or omission constituting the relevant offence.
- (2) Provision under section 48 must secure that, in a case where a fixed penalty notice is issued to a person in respect of a relevant offence, the Scottish Ministers may not—
- (a) serve on the person a notice of intent referred to in section 49(2)(a) in relation to an act or omission constituting the relevant offence, or
 - (b) impose a variable monetary penalty on the person in relation to an act or omission constituting the relevant offence.
- (3) In this paragraph “relevant offence” has the meaning given in section 25(2) of the Aquaculture and Fisheries (Scotland) Act 2007.]

Monetary penalties

- 5 An order under section 46 or 48 which enables the Scottish Ministers to require a person to pay a fixed monetary penalty or a variable monetary penalty may include provision—
- (a) for early payment discounts,
 - (b) for the payment of interest or other financial penalties for late payment of the penalty (such interest or other financial penalties not in total to exceed the amount of that penalty),
 - (c) for enforcement of the penalty.

Commencement Information

I4 Sch. 2 para. 5 in force at 6.4.2011 by [S.S.I. 2011/58](#), [art. 3\(a\)](#)

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Recovery of expenses

- 6 (1) Provision under section 48 may include provision for the Scottish Ministers, by notice, to require a person on whom a variable monetary penalty is imposed to pay the expenses incurred by the Scottish Ministers in relation to the imposition of the penalty up to the time of its imposition.
- (2) In sub-paragraph (1), the reference to expenses includes in particular—
- (a) investigation expenses,
 - (b) administration expenses,
 - (c) the expenses of obtaining expert advice (including legal advice).
- (3) Provision under this paragraph must secure that, in any case where a notice requiring payment of expenses is served—
- (a) the notice specifies the amount required to be paid,
 - (b) the Scottish Ministers may be required to provide a detailed breakdown of that amount,
 - (c) the person required to pay the expenses is not liable to pay any expenses shown by the person to have been unnecessarily incurred,
 - (d) the person required to pay the expenses may appeal against—
 - (i) the decision of the Scottish Ministers to impose the requirement to pay expenses,
 - (ii) the decision of the Scottish Ministers as to the amount of the expenses.
- (4) Provision under this paragraph may include the provision referred to in paragraph 5(b) and (c).
- (5) Provision under this paragraph must secure that the Scottish Ministers are required to publish guidance about how they will exercise the power conferred by the provision.

Commencement Information

I5 Sch. 2 para. 6 in force at 6.4.2011 by [S.S.I. 2011/58](#), [art. 3\(a\)](#)

Appeals

- 7 (1) An order under section 46 or 48 which makes provision for an appeal in relation to the imposition of any requirement or service of any notice may include provision—
- (a) suspending the requirement or notice pending determination of the appeal,
 - (b) as to the powers of the sheriff to whom the appeal is made.
- (2) The provision referred to in sub-paragraph (1)(b) includes provision conferring on the sheriff to whom the appeal is made power to—
- (a) withdraw the requirement or notice,
 - (b) confirm the requirement or notice,
 - (c) take such steps as the Scottish Ministers could take (by virtue of this Act) in relation to the act or omission giving rise to the requirement or notice,
 - (d) remit the decision whether to confirm the requirement or notice, or any other matter relating to that decision, to the Scottish Ministers.

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Commencement Information

I6 Sch. 2 para. 7 in force at 6.4.2011 by [S.S.I. 2011/58](#), [art. 3\(a\)](#)

Consultation

- 8 (1) Before making an order under section 46 or 48, the Scottish Ministers must consult the following (in addition to any persons who must be consulted under paragraph 9)—
- (a) such organisations as appear to the Scottish Ministers to be representative of persons substantially affected by the proposals,
 - (b) such other persons as the Scottish Ministers consider appropriate.
- (2) If, as a result of any consultation required by sub-paragraph (1), it appears to the Scottish Ministers that it is appropriate substantially to change the whole or any part of the proposals, the Scottish Ministers must undertake such further consultation with respect to the changes as they consider appropriate.
- (3) If, before the day on which this schedule comes into force, any consultation was undertaken which, had it been undertaken after that day, would to any extent have satisfied the requirements of this paragraph, those requirements may to that extent be taken to have been satisfied.

Commencement Information

I7 Sch. 2 para. 8 in force at 6.4.2011 by [S.S.I. 2011/58](#), [art. 3\(a\)](#)

Guidance as to use of civil sanctions

- 9 (1) Where the Scottish Ministers make provision about the imposition of civil sanctions under section 46 or 48 the provision must secure the results in sub-paragraph (2).
- (2) The results are that—
- (a) the Scottish Ministers must publish guidance about their use of the sanction,
 - (b) in the case of guidance relating to a fixed monetary penalty or a variable monetary penalty, the guidance must contain the relevant information,
 - (c) the Scottish Ministers must revise the guidance where appropriate,
 - (d) the Scottish Ministers must consult such persons as the provision may specify before publishing any guidance or revised guidance,
 - (e) the Scottish Ministers must have regard to the guidance or the revised guidance in exercising their functions under Part 4.
- (3) In the case of guidance relating to a fixed monetary penalty, the relevant information referred to in sub-paragraph (2)(b) is information as to—
- (a) the circumstances in which the penalty is likely to be imposed,
 - (b) the circumstances in which it may not be imposed,
 - (c) the amount of the penalty,
 - (d) how liability for the penalty may be discharged and the effect of the discharge,
 - (e) rights to make representations and objections and rights of appeal.

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- (4) In the case of guidance relating to a variable monetary penalty, the relevant information referred to in sub-paragraph (2)(b) is information as to—
- (a) the circumstances in which the penalty is likely to be imposed,
 - (b) the circumstances in which it may not be imposed,
 - (c) the matters likely to be taken into account by the Scottish Minister in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance), and
 - (d) rights to make representations and objections and rights of appeal.

Commencement Information

I8 Sch. 2 para. 9 in force at 6.4.2011 by [S.S.I. 2011/58](#), [art. 3\(a\)](#)

Guidance as to enforcement of offences

- 10 (1) Where the Scottish Ministers make provision about the imposition of civil sanctions under section 46 or 48 in relation to an offence they must also prepare and publish guidance about how the offence is enforced.
- (2) The guidance must include guidance as to—
- (a) the sanctions (including criminal sanctions) to which a person who commits the offence may be liable,
 - (b) the action which the Scottish Ministers may take to enforce the offence, whether by virtue of section 46 or 48 or otherwise, and
 - (c) the circumstances in which the Scottish Ministers are likely to take any such action.
- (3) The Scottish Ministers may from time to time revise guidance published by them under this paragraph and publish the revised guidance.
- (4) The Scottish Ministers must consult such persons as they consider appropriate before publishing any guidance or revised guidance under this paragraph.

Commencement Information

I9 Sch. 2 para. 10 in force at 6.4.2011 by [S.S.I. 2011/58](#), [art. 3\(a\)](#)

Publication of enforcement action

- 11 (1) Where the Scottish Ministers make provision about the imposition of civil sanctions under section 46 or 48 the provision must (except where sub-paragraph (4) applies) secure the result in sub-paragraph (2).
- (2) The result is that the Scottish Ministers must from time to time publish reports specifying—
- (a) the cases in which the civil sanction has been imposed,
 - (b) where the civil sanction is a fixed monetary penalty, the cases in which liability to the penalty has been discharged pursuant to section 47(2)(b), and
 - (c) where the civil sanction is a variable monetary penalty, the cases in which an undertaking referred to in section 49(5) is accepted from such a person.

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- (3) In sub-paragraph (2)(a), the reference to cases in which the civil sanction has been imposed does not include cases where the sanction has been imposed but overturned on appeal.
- (4) The provision need not secure the result in sub-paragraph (2) in cases where the Scottish Ministers consider that it would be inappropriate to do so.

Commencement Information

I10 Sch. 2 para. 11 in force at 6.4.2011 by [S.S.I. 2011/58](#), [art. 3\(a\)](#)

Disclosure of information

- 12 (1) Information held by or on behalf of a person mentioned in sub-paragraph (2) may be disclosed to the Scottish Ministers where—
- (a) the person has an enforcement function in relation to the offence, and
 - (b) the information is disclosed for the purpose of the exercise by the Scottish Ministers of any powers conferred on them under section 46 or 48 in relation to the offence.
- (2) The persons are—
- (a) a Procurator Fiscal,
 - (b) a constable of [^{F5}the Police Service of Scotland].
- (3) It is immaterial for the purposes of sub-paragraph (1) whether the information was obtained before or after the coming into force of this paragraph.
- (4) A disclosure under this paragraph is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (5) Nothing in this paragraph authorises the making of a disclosure in contravention of—
- (a) [^{F6}the data protection legislation] , or
 - [^{F7}(b) any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.]
- (6) This paragraph does not affect a power to disclose which exists apart from this paragraph.
- [^{F8}(7) In this paragraph, “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).]

Textual Amendments

- F5** Words in Sch. 2 para. 12(2)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012](#) (asp 8), s. 129(2), [Sch. 7 para. 39](#); [S.S.I. 2013/51](#), [art. 2](#) (with transitional provisions and savings in [S.S.I. 2013/121](#))
- F6** Words in sch. 2 para. 12(5)(a) substituted (25.5.2018) by [Data Protection Act 2018](#) (c. 12), s. 212(1), [Sch. 19 para. 165\(2\)](#) (with ss. 117, 209, 210); [S.I. 2018/625](#), [reg. 2\(1\)\(g\)](#)
- F7** [Sch. 2 para. 12\(5\)\(b\)](#) substituted (27.6.2018) by [Investigatory Powers Act 2016](#) (c. 25), s. 272(1), [Sch. 10 para. 26](#) (with [Sch. 9 paras. 7, 8, 10](#)); [S.I. 2018/652](#), [reg. 12\(g\)\(iii\)](#)
- F8** [Sch. 2 para. 12\(7\)](#) inserted (25.5.2018) by [Data Protection Act 2018](#) (c. 12), s. 212(1), [Sch. 19 para. 165\(3\)](#) (with ss. 117, 209, 210); [S.I. 2018/625](#), [reg. 2\(1\)\(g\)](#)

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Commencement Information

III Sch. 2 para. 12 in force at 6.4.2011 by [S.S.I. 2011/58](#), **art. 3(a)**

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