

*Status: Point in time view as at 09/02/2023.*

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

PROSPECTIVE

## SCHEDULE 1

*(introduced by sections 5(1) and 8(2))*

### PREPARATION, ADOPTION ETC. OF MARINE PLANS OR ANY AMENDMENT

#### *Scottish Ministers to notify decision to prepare any marine plan*

- 1 (1) Where the Scottish Ministers decide to prepare a national marine plan they must, before beginning to prepare the plan, give notice of their intention to do so—
- (a) to any planning authority the district of which adjoins the Scottish marine area,
  - (b) to the Secretary of State,
  - (c) to the Department of the Environment in Northern Ireland.
- (2) Where the Scottish Ministers decide to prepare a regional marine plan they must, before beginning to prepare the plan, give notice of their intention to do so—
- (a) to any planning authority the district of which adjoins the Scottish marine region to which the plan is to apply,
  - (b) where the Scottish marine region to which the plan is to apply adjoins the area of sea within the seaward limits of the territorial sea of the United Kingdom adjacent to England, to the Secretary of State,
  - (c) where the Scottish marine region to which the plan is to apply adjoins the area of sea within the seaward limits of the territorial sea of the United Kingdom adjacent to Northern Ireland, to the Department of the Environment in Northern Ireland.
- (3) In this paragraph—
- “adjacent to England” and “adjacent to Northern Ireland”, in relation to areas of sea within the seaward limits of the territorial sea of the United Kingdom, are to be construed in accordance with subsections (4) to (9) of section 322 of the 2009 Act,
- “planning authority” and “the district” of a planning authority have the same meaning as in section 1(1) of the Town and Country Planning (Scotland) Act 1997 (c.8).

#### *Interpretation*

- 2 In this schedule—
- “consultation draft” is to be read in accordance with paragraph 9,
- “interested persons” means—
- (a) any persons appearing to the Scottish Ministers to be likely to be interested in, or affected by, policies proposed to be included in the national marine plan or (as the case may be) the regional marine plan,
  - (b) members of the general public,
- “SPP” means a statement of public participation under paragraph 4 and includes an SPP revised under paragraph 6.

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*Regional marine plans to be compatible with certain other plans*

- 3 (1) In preparing or amending a regional marine plan for a Scottish marine region (“area A”), the Scottish Ministers must take all reasonable steps to secure that the plan is compatible with any regional marine plan for any Scottish marine region which adjoins area A.
- (2) They must also take all reasonable steps to secure that any regional marine plan is compatible with the development plan for any area which adjoins area A.
- (3) In this paragraph, “development plan” is to be read in accordance with section 24 of the Town and Country Planning (Scotland) Act 1997.

*Statement of public participation*

- 4 (1) Before preparing a national marine plan or a regional marine plan, the Scottish Ministers must prepare and publish a statement of public participation in relation to each such category of plan (an “SPP”).
- (2) An SPP is a statement of the policies settled by the Scottish Ministers as to when consultation is likely to take place and with whom, its likely form, and the steps to be taken to involve the general public in the stages of preparation or review of the proposed national marine plan or (as the case may be) the proposed regional marine plan.
- (3) An SPP must invite the making of representations in accordance with it as to matters to be included in the proposed marine plan.
- (4) The Scottish Ministers must publish an SPP in such manner as they consider is most likely to bring it to the attention of interested persons.
- (5) The Scottish Ministers must take all reasonable steps to comply with an SPP.

*Further provision about content of an SPP*

- 5 (1) An SPP must include a proposed timetable.
- (2) The proposed timetable must include such provision as the Scottish Ministers consider reasonable for each of the following—
- (a) the preparation and publication of a consultation draft under paragraph 9,
  - (b) the making of representations about the consultation draft,
  - (c) the settling of the text of a national marine plan or (as the case may be) a regional marine plan with a view to adoption and publication under paragraph 14,
  - (d) laying a draft of a proposed national marine plan before the Parliament under paragraph 13,
  - (e) the adoption and publication of a national marine plan or (as the case may be) a regional marine plan under paragraph 14.
- (3) An SPP may include provision for or in connection with the holding of public meetings about a consultation draft.
- (4) An SPP must include provision about the making of—

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- (a) representations in response to the invitation issued under paragraph 4(3) about the matters to be included in a proposed national marine plan or (as the case may be) a proposed regional marine plan,
  - (b) representations under paragraph 10 about a consultation draft.
- (5) Provision to be made under sub-paragraph (4) includes provision about—
- (a) the manner in which representations may be made,
  - (b) the time within which representations must be made.

*Review and revision of an SPP*

- 6
- (1) The Scottish Ministers must keep an SPP under review.
  - (2) If at any time the Scottish Ministers consider it necessary or expedient to revise an SPP they must do so.
  - (3) Where the Scottish Ministers revise an SPP they must publish the SPP as revised.

*Advice and assistance*

- 7
- (1) In connection with the preparation of a national marine plan or (as the case may be) a regional marine plan, or of any proposals for any such plan, the Scottish Ministers may seek advice or assistance from any body or person in relation to any matter in which the body or person has particular expertise.
  - (2) The steps that the Scottish Ministers may take for the purposes of facilitating the involvement of interested persons in—
    - (a) the development of proposals for inclusion in a proposed national marine plan or regional marine plan,
    - (b) consultation in connection with such proposals,include the convening of groups of persons for such purposes and in such manner as the Scottish Ministers consider appropriate.

*Matters to which Scottish Ministers to have regard in preparing marine plans*

- 8
- (1) The matters to which the Scottish Ministers are to have regard in preparing—
    - (a) a national marine plan include the matters in sub-paragraph (2),
    - (b) a regional marine plan include the matters in sub-paragraph (3).
  - (2) The matters, as regards a national marine plan, are—
    - (a) the requirement under section 6(1) for a national marine plan to be in conformity with any marine policy statement currently in effect for the Scottish marine area unless relevant considerations indicate otherwise,
    - (b) the effect which any proposal for inclusion in the plan is likely to have on any area which adjoins the Scottish marine area,
    - (c) the results of the review required by section 11,
    - (d) the SPP relating to preparation of the plan,
    - (e) any representations made in response to the invitation issued in pursuance of paragraph 4(3),
    - (f) any advice received in pursuance of paragraph 7(1),
    - (g) any plan (not falling within paragraph 3(1) or (2)) prepared by a public or local authority in connection with the management or use of the sea or the

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- coast or of marine or coastal resources, in the Scottish marine area or in any adjoining or adjacent area in the United Kingdom or the UK marine area,
- (h) the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961 (c.55),
- [<sup>F1</sup>(ha) the powers and duties of a relevant person,]
- (i) such other matters as the Scottish Ministers consider relevant.
- (3) The matters, as regards a regional marine plan, are—
- (a) the requirement under section 6(1) for a regional marine plan to be in conformity with any marine policy statement currently in effect for the Scottish marine area unless relevant considerations indicate otherwise,
- (b) the requirement under section 6(2) for a regional marine plan to be in conformity with any national marine plan currently in effect, unless relevant considerations indicate otherwise,
- (c) the effect which any proposal for inclusion in the plan is likely to have on any area which adjoins the Scottish marine region to which the plan is to apply,
- (d) the results of the review required by section 11,
- (e) the SPP relating to the plan,
- (f) any representations made in response to the invitation issued in pursuance of paragraph 4(3),
- (g) any advice received under paragraph 7(1),
- (h) any plan (not falling within paragraph 3(1) or (2)) prepared by a public or local authority in connection with the management or use of the sea or the coast, or of marine or coastal resources, in the Scottish marine region to which the plan is to apply or in any adjoining or adjacent area in the United Kingdom or the UK marine area,
- (i) the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961,
- [<sup>F2</sup>(ia) the powers and duties of a relevant person,]
- (j) such other matters as Scottish Ministers consider relevant.
- [<sup>F3</sup>(4) In this paragraph, “relevant person”, in relation to any property, rights or interests to which section 90B(5) of the Scotland Act 1998 applies, means the person who manages that property or those rights or interests.]

#### Textual Amendments

- F1** Sch. 1 para. 8(2)(ha) inserted (1.4.2017) by [The Crown Estate Transfer Scheme 2017 \(S.I. 2017/524\)](#), art. 1(2), **Sch. 5 para. 42(a)**
- F2** Sch. 1 para. 8(3)(ia) inserted (1.4.2017) by [The Crown Estate Transfer Scheme 2017 \(S.I. 2017/524\)](#), art. 1(2), **Sch. 5 para. 42(b)**
- F3** Sch. 1 para. 8(4) inserted (1.4.2017) by [The Crown Estate Transfer Scheme 2017 \(S.I. 2017/524\)](#), art. 1(2), **Sch. 5 para. 42(c)**

#### *Preparation and publication of a consultation draft*

- 9 (1) The Scottish Ministers must publish in such manner as they consider appropriate a draft containing their proposals for inclusion in a national marine plan or (as the case may be) a regional marine plan (a “consultation draft”).

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- (2) The Scottish Ministers must also take such steps as they consider appropriate to secure that the proposals contained in a consultation draft are brought to the attention of interested persons.

*Representations about a consultation draft*

- 10 (1) Any person may make representations about a consultation draft.
- (2) Any such representations are to be made in accordance with the SPP applicable to the draft.
- (3) If any representations are made about a consultation draft, the Scottish Ministers must consider them in the course of settling the text of the national marine plan or (as the case may be) the regional marine plan with a view to adoption and publication under paragraph 14.

*Independent investigation*

- 11 (1) Where the Scottish Ministers have published a consultation draft in accordance with paragraph 9, they must consider appointing an independent person to investigate the proposals contained in the draft and to report on them.
- (2) In deciding whether to appoint such a person, the Scottish Ministers must have regard to—
- (a) any representations received about the matters to be included in the proposed national marine plan or (as the case may be) the proposed regional marine plan in response to the invitation issued in pursuance of paragraph 4(3),
  - (b) any representations received about the proposals published in the consultation draft,
  - (c) such other matters as Scottish Ministers consider relevant.
- (3) The person so appointed must—
- (a) make recommendations,
  - (b) give reasons for the recommendations.
- (4) The Scottish Ministers must publish the recommendations and the reasons given for them in the report.

*Matters to which Scottish Ministers are to have regard in settling text with a view to adoption etc.*

- 12 The Scottish Ministers, in settling the text of a national marine plan or (as the case may be) a regional marine plan with a view to adoption and publication under paragraph 14, must have regard to—
- (a) any recommendations made by any person appointed under paragraph 11,
  - (b) the reasons given by any such person for any such recommendations,
  - (c) such other matters as the Scottish Ministers consider relevant.

*Laying settled text of draft national marine plan before the Parliament*

- 13 (1) The Scottish Ministers must not adopt a national marine plan unless they have complied with the requirements of this paragraph.

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- (2) The Scottish Ministers must lay before the Parliament a copy of the draft plan containing the text settled in accordance with paragraph 12.
- (3) If, during the period for Parliamentary consideration the Parliament passes a resolution with regard to the draft, the Scottish Ministers must lay before the Parliament a statement setting out their response to the resolution.
- (4) In this paragraph, “the period for Parliamentary consideration” means the period of 40 days beginning on the day on which a copy of the draft plan is laid before the Parliament under sub-paragraph (2); and in reckoning that period no account is to be taken of any time during which the Parliament is—
  - (a) dissolved,
  - (b) in recess for more than 4 days.

*Adoption and publication of marine plan*

- 14
- (1) A national marine plan or (as the case may be) a regional marine plan is adopted by the Scottish Ministers when they decide to publish the plan.
  - (2) A national marine plan which the Scottish Ministers decide to publish may be—
    - (a) the same as the draft laid before the Parliament under paragraph 13,
    - (b) that draft with such modifications as the Scottish Ministers consider appropriate.
  - (3) A regional marine plan which the Scottish Ministers decide to publish may be—
    - (a) the same as the proposals published in the consultation draft relating to it, or
    - (b) those proposals with such modifications as the Scottish Ministers consider appropriate.
  - (4) Where the Scottish Ministers adopt a national marine plan or a regional marine plan, they must publish it as soon as reasonably practicable after its adoption, together with statements of each of the following—
    - (a) any modifications that have been made to the proposals published in the consultation draft for the plan,
    - (b) the reasons for those modifications,
    - (c) if any recommendations made by any independent person appointed under paragraph 11 have not been implemented in the plan, the reasons why any such recommendations have not been implemented,
    - (d) if any matter in a resolution of the Parliament in pursuance of paragraph 13 has not been implemented in a national marine plan published under this paragraph, the reasons why any such matter has not been implemented.
  - (5) The Scottish Ministers must lay a copy of the adopted national marine plan before the Parliament as soon as is reasonably practicable after the plan's adoption.

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## 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

- [<sup>F4</sup>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

- F4** 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.
  - [<sup>F5</sup>(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

- F5** 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.
- [<sup>F6</sup>(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

- F6** 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\(a\)](#)

### *<sup>F7</sup>Civil sanctions and fixed penalty notices*

#### Textual Amendments

**F7** 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 [<sup>F8</sup>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) [<sup>F9</sup>the data protection legislation] , or
  - [<sup>F10</sup>(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.
- [<sup>F11</sup>(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

- F8** 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](#))
- F9** 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\(1\)\(g\)](#)
- F10** 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\(g\)\(iii\)](#)
- F11** 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

**I11** Sch. 2 para. 12 in force at 6.4.2011 by [S.S.I. 2011/58](#), [art. 3\(a\)](#)

### SCHEDULE 3

*(introduced by section 137(3))*

#### WARRANTS ISSUED UNDER SECTION 137

#### Modifications etc. (not altering text)

**C2** Sch. 3 excluded (31.12.2010) by [The Marine \(Scotland\) Act 2010 \(Consequential Provisions\) Order 2010 \(S.I. 2010/2870\)](#), arts. 1, [10](#)

PROSPECTIVE

#### *Introductory*

- 1 (1) This schedule has effect in relation to the issue to marine enforcement officers of warrants under section 137.
- (2) Entry into a dwelling under such a warrant is unlawful unless it complies with the provisions of this schedule.

PROSPECTIVE

#### *Applications for warrants*

- 2 (1) Where a marine enforcement officer applies for a warrant, the officer must—
- (a) state the ground on which the application is made,
  - (b) state the enactment under which the warrant would be issued,
  - (c) specify the dwelling which it is desired to enter and inspect,
  - (d) identify, so far as is practicable, the purpose for which entry is desired.
- (2) An application for a warrant must be made without notice and must be supported by evidence on oath.
- (3) The officer must answer on oath any question that the justice hearing the application asks the officer.

PROSPECTIVE

#### *Safeguards in connection with power of entry conferred by warrant*

- 3 A warrant authorises entry on one occasion only.
- 4 (1) A warrant must specify—

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- (a) the name of the person who applies for it,
  - (b) the date on which it is issued,
  - (c) the enactment under which it is issued,
  - (d) the dwelling to be entered.
- (2) A warrant must identify, so far as is practicable, the purpose for which entry is desired.
- 5 (1) 2 copies are to be made of a warrant.
- (2) The copies must be clearly certified as copies.

PROSPECTIVE

*Execution of warrants*

- 6 A warrant may be executed by any marine enforcement officer.
- 7 (1) A warrant may authorise persons to accompany any marine enforcement officer who is executing it.
- (2) A person authorised under this paragraph has the same powers as the officer whom the person is accompanying in respect of the execution of the warrant, but may exercise those powers only in the company of, and under the supervision of, an enforcement officer.
- 8 (1) Execution of a warrant must be within 3 months from the date of its issue.
- (2) Execution of a warrant must be at a reasonable time, unless it appears to the officer executing it that there are grounds for suspecting that the purpose of entering the dwelling may be frustrated if the officer seeks to enter at a reasonable time.
- 9 (1) Where the occupier of a dwelling that is to be entered under a warrant is present at the time when a marine enforcement officer seeks to execute the warrant, the following requirements must be satisfied—
- (a) the occupier must be told the officer's name,
  - (b) the officer must produce to the occupier documentary evidence of the fact that the officer is a marine enforcement officer,
  - (c) the officer must produce the warrant to the occupier,
  - (d) the officer must supply the occupier with a certified copy of it.
- (2) Where—
- (a) the occupier of a dwelling that is to be entered under a warrant is not present when a marine enforcement officer seeks to execute it, but
  - (b) some other person who appears to the officer to be in charge of the dwelling is present,
- sub-paragraph (1) has effect as if any reference to the occupier were a reference to that other person.
- (3) If there is no person present who appears to the marine enforcement officer to be in charge of the dwelling, the officer must leave a certified copy of the warrant in a prominent place there.

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PROSPECTIVE

*Return of warrants*

- 10 (1) A warrant which—
- (a) has been executed, or
  - (b) has not been executed within the time authorised for its execution, must be returned to the appropriate person.
- (2) In sub-paragraph (1), the appropriate person is—
- (a) in the case of a warrant issued by a sheriff, the sheriff clerk,
  - (b) in the case of a warrant issued by a justice of the peace or stipendiary magistrate, the clerk of the justice of the peace court.
- (3) A warrant that is returned under this paragraph must be retained by the person to whom it is returned for a period of 12 months.
- (4) If during that period the occupier of the dwelling to which the warrant relates asks to inspect it, the occupier must be allowed to do so.

SCHEDULE 4

*(introduced by section 167)*

CONSEQUENTIAL MODIFICATIONS

**PART 1**

MARINE LICENSING

*Coast Protection Act 1949 (c.74)*

- 1 In the Coast Protection Act 1949—
- (a) Part II is repealed,
  - (b) in section 49, subsection (2A) is repealed.

**Commencement Information**

**I12** Sch. 4 para. 1 in force at 6.4.2011 by S.S.I. 2011/58, art. 3(d)

*Merchant Shipping Act 1988 (c.12)*

- 2 Section 36 of the Merchant Shipping Act 1988 is repealed.

**Commencement Information**

**I13** Sch. 4 para. 2 in force at 6.4.2011 by S.S.I. 2011/58, art. 3(d)



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*Energy Act 2004 (c.20)*

- 3 In section 99 of the Energy Act 2004, subsections (4) and (5) are repealed.

**Commencement Information**

**I14** Sch. 4 para. 3 in force at 6.4.2011 by S.S.I. 2011/58, art. 3(d)

**PART 2**

MARINE PROTECTION AND ENHANCEMENT: THE SCOTTISH MARINE PROTECTION AREA

*Protection of Wrecks Act 1973 (c.33)*

- 4 Section 1 of the Protection of Wrecks Act 1973 is repealed.

**Commencement Information**

**I15** Sch. 4 para. 4 in force at 1.11.2013 by S.S.I. 2013/276, art. 2

*Wildlife and Countryside Act 1981 (c.69)*

- 5 In the Wildlife and Countryside Act 1981—
- (a) in the italic heading immediately preceding section 34A, the words “, marine nature reserves” are repealed,
  - (b) sections 36 and 37 are repealed,
  - (c) in section 67, in subsection (2), the words “, 36” are repealed,
  - (d) Schedule 12 is repealed.

**Commencement Information**

**I16** Sch. 4 para. 5 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(h)

*Territorial Sea Act 1987 (c.49)*

- 6 In the Territorial Sea Act 1987—
- (a) in section 3, in subsection (2), paragraph (b) is repealed,
  - (b) in Schedule 1, paragraph 6 is repealed.

**Commencement Information**

**I17** Sch. 4 para. 6 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(h)

*Local Government (Wales) Act 1994 (c.19)*

- 7 In the Local Government (Wales) Act 1994, in Schedule 16, in paragraph 65, subparagraphs (4) and (10) are repealed.

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**Commencement Information**

**I18** Sch. 4 para. 7 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(h)

*Local Government etc.(Scotland) Act 1994 (c.39)*

- 8 In the Local Government etc. (Scotland) Act 1994, in Schedule 13, in paragraph 125, sub-paragraph (3) is repealed.

**Commencement Information**

**I19** Sch. 4 para. 8 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(h)

*Water Industry (Scotland) Act 2002 (asp 3)*

- 9 In the Water Industry (Scotland) Act 2002, in schedule 7, in paragraph 11, sub-paragraph (3) is repealed.

**Commencement Information**

**I20** Sch. 4 para. 9 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(h)

**PART 3**

PROSPECTIVE

Sea fisheries

*Sea Fisheries Act 1968*

- 10 In the Sea Fisheries Act 1968 (c.77), in section 15 (amendments of Sea Fisheries (Shellfish) Act 1967), subsection (2A) is repealed.

**Commencement Information**

**I21** Sch. 4 para. 10 in force at 24.2.2011 by S.S.I. 2011/58, art. 2(b) (with art. 5)

*Fisheries Act 1981*

- 11 (1) The Fisheries Act 1981 (c.29) is modified as follows.
- (2) The following provisions are repealed—
- (a) section 19(2)(c),
  - (b) section 22(2)(a) and (3),
  - (c) section 28.
- (3) In paragraph 33 of Part 2 of Schedule 4 (offences to which section 33(5) applies)—

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- (a) for “Sea Fisheries (Conservation) Act 1967” substitute “ Sea Fish (Conservation) Act 1967 ”,
- (b) for “smaller than the prescribed size” substitute “ which do not meet the prescribed size requirements ”.

**Commencement Information**

**I22** Sch. 4 para. 11 in force at 24.2.2011 by S.S.I. 2011/58, art. 2(b)

*Sea Fish (Conservation) Act 1992*

- 12 In the Sea Fish (Conservation) Act 1992 (c.60), paragraph (b) of section 5 is repealed.

**Commencement Information**

**I23** Sch. 4 para. 12 in force at 24.2.2011 by S.S.I. 2011/58, art. 2(b)

*Criminal Justice and Public Order Act 1994*

- 13 In the Criminal Justice and Public Order Act 1994 (c.33), in Part 1 of Schedule 8 (increase in penalties), the entry relating to section 7(4) of the Sea Fisheries (Shellfish) Act 1967 is repealed.

**Commencement Information**

**I24** Sch. 4 para. 13 in force at 24.2.2011 by S.S.I. 2011/58, art. 2(b)

SCHEDULE 5

*(introduced by section 166(2))*

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the Wild Birds Directive

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**Changes to legislation:**

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