



# Marine (Scotland) Act 2010

## 2010 asp 5

### PART 4

#### MARINE LICENSING

##### *Civil sanctions*

#### **49 Variable monetary penalties: procedure**

- (1) Provision under section 48 must secure the results in subsection (2).
- (2) The results are that—
  - (a) where the Scottish Ministers propose to impose a variable monetary penalty on a person, they must serve on the person a notice (a “notice of intent”) which complies with subsection (3),
  - (b) the person may make written representations and objections to the Scottish Ministers in relation to the proposed imposition of the penalty,
  - (c) after the end of the period for making such representations and objections the Scottish Ministers must decide whether to impose a penalty and, if so, the amount of the penalty,
  - (d) where the Scottish Ministers decide to impose a penalty, the notice imposing it (the “final notice”) complies with subsection (6), and
  - (e) the person on whom a penalty is imposed may appeal to the sheriff against the decision as to the imposition or amount of the penalty.
- (3) To comply with this subsection the notice of intent must include information as to—
  - (a) the grounds for the proposal to impose the penalty,
  - (b) the right to make representations and objections,
  - (c) the circumstances in which the Scottish Ministers may not impose the penalty, and
  - (d) the period within which representations and objections may be made, which may not be less than the period of 28 days beginning with the day on which the notice of intent is received.
- (4) Provision to secure the result in subsection (2)(c)—

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*Status: This is the original version (as it was originally enacted).*

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- (a) must secure that the Scottish Ministers may not decide to impose a penalty on a person where they are satisfied that the person would not, by reason of any defence raised by that person, be liable to be convicted of the offence in question, and
  - (b) may include provision for other circumstances in which the Scottish Ministers may not decide to impose a penalty.
- (5) Provision to secure the result in subsection (2)(c) must also include provision for—
- (a) the person on whom the notice of intent is served to be able to 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,
  - (b) the Scottish Ministers to be able to accept or reject such an undertaking, and
  - (c) the Scottish Ministers to take any undertaking so accepted into account in their decision.
- (6) To comply with this subsection the final notice must include information as to—
- (a) the grounds for imposing the penalty,
  - (b) how payment may be made,
  - (c) the period within which the payment must be made,
  - (d) any early payment discounts or late payment penalties,
  - (e) rights of appeal, and
  - (f) the consequences of non-payment.
- (7) Provision to secure the result in subsection (2)(e) must secure that the grounds on which a person may appeal against a decision of the Scottish Ministers include that—
- (a) the decision was based on an error of fact,
  - (b) the decision was wrong in law,
  - (c) the amount of the penalty is unreasonable,
  - (d) the decision was unreasonable for any other reason.