

Draft Order laid before the Assembly under section 43 of the Marine Act (Northern Ireland) 2013, for approval

DRAFT STATUTORY RULES OF NORTHERN IRELAND

2015 No.

ENVIRONMENTAL PROTECTION

MARINE CONSERVATION

The Marine Conservation (Fixed Monetary Penalties) Order (Northern Ireland) 2015

Made - - - - 2015
Coming into operation 2015

The Department of the Environment, in exercise of the powers conferred by sections 35 and 46(1) of the Marine Act (Northern Ireland) 2013⁽¹⁾, makes the following Order. In accordance with paragraph 4 of Schedule 2 to that Act the Department of the Environment has consulted such organisations as appear to it to be representative of persons substantively affected by the proposals and such other persons as it considers appropriate.

PART 1

Introductory provisions

Citation and commencement

1. This Order may be cited as the Marine Conservation (Fixed Monetary Penalties) Order (Northern Ireland) 2015 and comes into operation on xx xxxx 2015.

Interpretation

2. In this Order—

“Appeals Commission” means the Water Appeals Commission for Northern Ireland in accordance with Article 292 (The Water Appeals Commission) of the Water and Sewerage Services (Northern Ireland) Order 2006⁽²⁾;

“final notice” means a notice served in accordance with Article 7(4);

(1) 2013 c. 10
(2) S.I. 2006/3336 (N.I. 21)

- “notice of intent” means a notice served in accordance with Article 4(1);
“the Act” means the Marine Act (Northern Ireland) 2013; and
“the Department” means the Department of the Environment.

PART 2

Fixed monetary penalties

Power to impose a fixed monetary penalty

3.—(1) The Department may by notice impose a fixed monetary penalty on a person in relation to an offence under section 32(1) of the Act (Offence of contravening byelaws).

(2) The Department must, before imposing a fixed monetary penalty under paragraph (1), 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 £200 in any other case.

Notice of intent

4.—(1) Where the Department proposes to impose a fixed monetary penalty on a person, it must serve a written notice of intent on that person.

(2) A notice of intent must—

- (a) state the amount of the penalty;
- (b) offer the person the opportunity to discharge their liability to the penalty by payment of 50% of the amount of the penalty within a period of 28 days beginning with the date on which the notice of intent is served;
- (c) include information as to—
 - (i) the grounds for the proposal to impose the fixed monetary penalty;
 - (ii) the effect of payment of the sum specified in Article 5;
 - (iii) the right to make representations and objections conferred by Article 6;
 - (iv) the period within which representations and objections may be made by virtue of Article 6;
 - (v) the circumstances in which the Department may not impose the fixed monetary penalty;
 - (vi) the period within which liability to the fixed monetary penalty may be discharged by virtue of Article 5;
 - (vii) the period within which representations and objections may be made; and
 - (viii) how payment may be made.

Discharge of liability

5. A person’s liability to a fixed monetary penalty is discharged if 50% of the amount of the penalty is paid within the period of 28 days beginning with the date on which the notice of intent is served.

Representations and objections

6.—(1) A person on whom a notice of intent is served may, within a period of 28 days beginning with the date on which the notice of intent is served, make written representations and objections to the Department 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 5.

Imposition of a fixed monetary penalty

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

(2) In making the decision in accordance with paragraph (1) the Department must consider any representations or objections received.

(3) The Department must decide not to impose a fixed monetary penalty on a person where it 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.

(4) Where the Department decides to impose a fixed monetary penalty on a person, it must serve a final notice in writing on that person.

(5) The final notice must include information as to—

- (a) the grounds for imposing the fixed monetary penalty;
- (b) the Department's response to any representations and objections received;
- (c) the amount of the fixed monetary penalty;
- (d) how payment may be made;
- (e) the period within which payment must be made;
- (f) the effect of Article 8 (Discount for early payment);
- (g) the effect of Article 9 (Payment dates and late payment penalties);
- (h) right of appeal; and
- (i) the consequences of non-payment.

(6) This Article does not apply where a person has discharged liability under Article 5.

Discount for early payment

8. A person who makes representations or objections in accordance with Article 6 may discharge liability to a fixed monetary penalty by paying to the Department 50% of the amount of the penalty within a period of 28 days beginning with the date on which the final notice is served.

Payment dates and late payment penalties

9.—(1) Where no appeal is brought against the decision to impose a fixed monetary penalty, the penalty must be paid within a period of 28 days beginning with the date on which the final notice is served.

(2) If a fixed monetary penalty is not paid within the period specified in paragraph (1), the amount of the penalty shall be increased by 50%.

(3) Where an appeal is brought against the decision to impose a fixed monetary penalty but a fixed monetary penalty remains payable following that appeal, the penalty must be paid within a period of 28 days beginning with the date on which the appeal is determined.

(4) If a fixed monetary penalty is not paid within a period specified in paragraph (3), the amount of the penalty shall be increased by 50%.

Restrictions on other sanctions

- 10.**—(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 that person in respect of the act to which the notice relates before the end of the period of 28 days beginning with the date on which the notice of intent is served; and
 - (b) if that person discharges liability in accordance with the notice, that person may not at any time be convicted of the offence to which the notice of intent relates.
- (2) Where a fixed monetary penalty is imposed on a person, that person may not at any time be convicted of the offence in relation to which the penalty is imposed in respect of the act giving rise to the penalty.

PART 3

Appeals

Appeals against a fixed monetary penalty

- 11.**—(1) A person on whom a fixed monetary penalty has been imposed may appeal against the decision to impose it on the grounds specified in paragraph (2).
- (2) The grounds for appeal are—
- (a) that the decision is based on an error in fact;
 - (b) that the decision is based on an error in law;
 - (c) that the decision was unreasonable; and
 - (d) any other reason permitted by the Appeals Commission.

Appeals body

12. An appeal under this Part is to the Appeals Commission, and except as otherwise provided for in this Order, must be determined in accordance with Article 293 (Procedures of the Water Appeals Commission) of the Water and Sewerage Services (Northern Ireland) Order 2006.

Appeals procedures

- 13.**—(1) An appeal must—
- (a) be made by notice in writing containing the information specified in paragraph (2);
 - (b) be accompanied by the documents specified in paragraph (3); and
 - (c) be received by the Appeals Commission within 28 days from the day upon which the final notice is served.
- (2) A notice of appeal must contain—
- (a) the name, address (including any e-mail address) and telephone number of the appellant and any agent acting for the appellant; and
 - (b) a statement of the grounds of appeal.
- (3) A notice of appeal must be accompanied by—
- (a) the final notice;
 - (b) any relevant correspondence;
 - (c) all documents upon which the appellant wishes to rely;

- (d) such forms and other relevant information as may be required by the procedures of the Appeals Commission; and
 - (e) a list of all the documents accompanying the notice of appeal detailing the dates of those documents.
- (4) Before determining any appeal the Appeals Commission must, if either the appellant or the Department so desires, afford to each of them an opportunity of appearing before and being heard by the Appeals Commission.
- (5) In an appeal where the commission of an offence is an issue requiring determination, the Department must prove the commission of the offence beyond reasonable doubt and in any other case the Appeals Commission must determine the standard of proof.
- (6) A final notice which is the subject of an appeal is suspended pending the determination of that appeal.
- (7) The Appeals Commission may in respect of an appeal under Article 11 quash, confirm or vary the decision to impose the fixed monetary penalty.

PART 4

Guidance and publication of enforcement action

Guidance as to the use of a fixed monetary penalty

- 14.—(1) The Department must publish guidance about its use of the fixed monetary penalty.
- (2) The guidance must contain information as to—
- (a) the circumstances in which the fixed monetary 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) right to make representations and objections; and
 - (f) right of appeal.
- (3) The Department must revise the guidance where appropriate and publish any revised guidance.
- (4) The Department must consult such persons as it considers appropriate before publishing any guidance or revised guidance under this Article.
- (5) The Department must have regard to the guidance or revised guidance in exercising its functions.

Publication of enforcement action

- 15.—(1) The Department must from time to time publish reports specifying—
- (a) the cases in which a fixed monetary penalty has been imposed; and
 - (b) the cases in which liability to the penalty has been discharged pursuant to Article 5.
- (2) In paragraph (1) the reference to cases in which a fixed monetary penalty has been imposed does not include cases where the fixed monetary penalty has been imposed but overturned on appeal.
- (3) Paragraph (1) does not apply in cases where the Department considers that it would be inappropriate to specify the information referred to in that paragraph.

PART 5

General provisions

Recovery of payments

16. The Department may recover any amount of unpaid fixed monetary penalty imposed under this Order, and any amount of unpaid penalty for late payment payable under Article 9, as a civil debt.

Payment of certain discharge payments into Consolidated Fund

17. Where the Department receives any payment under this Order, the Department must pay it into the Northern Ireland Consolidated Fund.

Amending or withdrawing final notices

18. The Department may at any time withdraw a final notice, reduce the amount payable in the final notice, or amend a final notice to correct an error.

Service of notices

19.—(1) Any notice that is required or authorised to be served on a person under this Order may be served on that 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; or
- (d) in the case where an address for service using electronic communications has been given by the person, sending it using electronic communications, in accordance with the conditions 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 in Northern Ireland;
- (b) in the case of a firm, the principal office of the firm;
- (c) in the case of an unincorporated body or association, the principal office of the body or association; and
- (d) in any other case, the person’s usual or last known place of residence in Northern Ireland or last known place of business in Northern Ireland.

(3) In the case of—

- (a) a company registered outside Northern Ireland;
- (b) a firm carrying on business outside Northern Ireland; or
- (c) an unincorporated body or association with offices outside Northern Ireland;

the references in paragraph (2) to its principal office include references to its principal office within Northern Ireland (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 respects” means that the information contained in the notice is available to that person to no lesser extent, than it would be if served by means of a notice in printed form.

Amendment to the Water and Sewerage Services (Northern Ireland) Order 2006

20.—(1) The Water and Sewerage Services (Northern Ireland) Order 2006 is amended in accordance with paragraph (2).

(2) In Article 293(9) (Procedure of the Appeals Commission)—

(a) At the end of sub-paragraph (e) for “.” substitute “; and”; and

(b) after sub-paragraph (e) insert—

“(f) The Marine Conservation (Fixed Monetary Penalties) Order (Northern Ireland) 2015.”.

Sealed with the Official Seal of the Department of the Environment on xx xxxx 2015.



A senior officer of the
Department of the Environment

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides the Department of the Environment with the powers to apply fixed monetary penalties on persons who have contravened byelaws made under section 26 of the Marine Act (Northern Ireland) 2013 c. 10 (the Act).

Part 1 of this Order contains introductory provisions and definitions (see section 41 of the Act for further relevant definitions).

Part 2 contains provisions relating to fixed monetary penalties. Article 3 confers the power on the Department to impose such a penalty and sets the amounts. Article 4 defines the information that must be included in a notice of intent. Article 5 allows for a discount of 50% of the monetary penalty, if paid within 28 days of the date on which the notice of intent was served. Article 6 enables a person to make representations and objections to the Department before the decision to issue a final notice is made. Article 7 requires the Department to take cognisance of those representations and objections, and specifies the information that must be included in the final notice, should it be issued. Article 8 allows for a discount of 50% of the monetary penalty, if paid within 28 days of the date on which the final notice was served. Article 9 specifies when late payment penalties can be applied. Article 10 indicates where other sanctions may not be applied should the Department apply a fixed monetary penalty.

Part 3 contains provisions for making an appeal. Article 11 specifies the grounds under which an appeal may be made to the Appeals Commission. Article 12 identifies the appeals body and the legislation which sets its procedures. Article 13 defines the powers of the Appeals Commission, the procedures to be applied should a person make an appeal and the time limit for making an appeal.

Part 4 contains provisions on guidance and publication of enforcement action. Article 14 requires the Department to publish guidance on the application of fixed monetary penalties and defines the information that must be included in that guidance. Article 15 requires the Department to publish reports from time to time on the enforcement action it has taken regarding the use of fixed monetary penalties. The Article also allows the Department to refrain from publishing information where it considers it inappropriate to do so.

Part 5 contains general provisions. Article 16 enables the Department to recover unpaid monetary penalties as a civil debt. Article 17 requires all payments to the Department under the fixed monetary penalties regime to be paid to the Northern Ireland Consolidated Fund. Article 18 enables the Department at any time to withdraw the final notice, reduce the amount payable or amend the notice to correct an error. Article 19 defines how the Department may serve a notice and Article 20 amends Article 293(9) of the Water and Sewerage Services (NI) Order 2006 so that the Appeals Commission has the final decision on an appeal made under the Articles of this Order.