



# Marine and Coastal Access Act 2009

## 2009 CHAPTER 23

### PART 4

#### MARINE LICENSING

### CHAPTER 3

#### ENFORCEMENT

#### *Offences*

#### **85 Breach of requirement for, or conditions of, a licence**

- (1) A person who—
  - (a) contravenes section 65(1), or
  - (b) fails to comply with any condition of a marine licence, commits an offence.
- (2) A person who is bound by a condition of a licence by virtue of section 71(5) is not to be taken as having failed to comply with the condition unless the requirements of subsection (3) are satisfied.
- (3) The requirements are that—
  - (a) the appropriate licensing authority has served the person with a notice under this subsection which specifies the condition together with a period (which must be a reasonable period, in all the circumstances of the case) within which the person must comply with the condition, and
  - (b) the person has failed to comply with the condition within that period.
- (4) A person guilty of an offence under subsection (1) is liable—
  - (a) on summary conviction, to a fine not exceeding £50,000;

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- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

## **86 Action taken in an emergency**

- (1) It is a defence for a person charged with an offence under section 85(1) in relation to any activity to prove that—
  - (a) the activity was carried out for the purpose of securing the safety of a vessel, aircraft or marine structure, or for the purpose of saving life, and
  - (b) the person took steps within a reasonable time to inform the appropriate licensing authority of the matters set out in subsection (2).
- (2) The matters are—
  - (a) the fact that the activity was carried out,
  - (b) the locality and circumstances in which it was carried out, and
  - (c) any substances or objects concerned.
- (3) A person does not have the defence provided by subsection (1) if the court is satisfied that the activity was neither—
  - (a) necessary for any purpose mentioned in subsection (1)(a), nor
  - (b) a reasonable step to take in the circumstances.
- (4) A person does not have the defence provided by subsection (1) if the court is satisfied that—
  - (a) the activity was necessary for one of those purposes, but
  - (b) the necessity was due to the fault of the person or of some other person acting under the person’s direction or control.

## **87 Electronic communications: emergency works**

- (1) It is a defence for a person charged with an offence under section 85(1) in relation to any activity to prove that—
  - (a) for the purposes of paragraph 23 of the Electronic Communications Code (undertaker’s works), the person is the operator or a relevant undertaker, and
  - (b) the activity was carried out for the purpose of executing emergency works, within the meaning of that Code.
- (2) In this section “the Electronic Communications Code” means the code set out in Schedule 2 to the [Telecommunications Act 1984 \(c. 12\)](#).

## **88 Activity licensed by another State**

- (1) It is a defence for a person charged with an offence under section 85(1) in relation to any activity to which subsection (2) applies to prove that subsections (3) and (4) are satisfied in respect of that activity.
- (2) This subsection applies to any activity which—
  - (a) falls within item 2, 5 or 12 in section 66(1), and
  - (b) is carried on outside the UK marine licensing area.
- (3) This subsection is satisfied if—

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- (a) in the case of an activity falling within item 2 in subsection (1) of section 66, the vessel, aircraft, marine structure or floating container (as the case may be) was loaded in a Convention State, or in the national or territorial waters of a Convention State, with the substances or objects deposited;
  - (b) in the case of an activity falling within item 5 in that subsection, the vessel scuttled was towed or propelled from a Convention State, or from the national or territorial waters of a Convention State, to the place where the scuttling was carried out;
  - (c) in the case of an activity falling within item 12 in that subsection, the vessel or marine structure on which the incineration took place was loaded in a Convention State or the national or territorial waters of a Convention State with the substances or objects incinerated.
- (4) This subsection is satisfied if the activity was carried on—
- (a) in pursuance of a licence issued by the responsible authority in the Convention State concerned, and
  - (b) in accordance with the provisions of that licence.
- (5) For the purposes of this section—
- “Convention State” means a state which is a party to the London Convention, the London Protocol or the OSPAR Convention;
- “the London Convention” means the Convention on the Prevention of Maritime Pollution by Dumping of Wastes and Other Matter concluded at London in December 1972;
- “the London Protocol” means the Protocol to the London Convention agreed at London in November 1996;
- “the OSPAR Convention” means the Convention for the Protection of the Marine Environment of the North-East Atlantic concluded at Paris in September 1992.
- (6) The references in subsection (5) to the London Convention, the London Protocol and the OSPAR Convention are to them as they have effect from time to time.
- (7) The Secretary of State may by order amend subsections (5) and (6) in such manner as the Secretary of State considers appropriate for the purpose of giving effect to any international agreement which has been ratified by the United Kingdom and which alters the provisions of, or replaces, those Conventions or that Protocol.

## **89 Information**

- (1) A person who, for any of the purposes set out in subsection (2),—
- (a) makes a statement which is false or misleading in a material particular, knowing the statement to be false or misleading,
  - (b) makes a statement which is false or misleading in a material particular, being reckless as to whether the statement is false or misleading, or
  - (c) intentionally fails to disclose any material particular,
- commits an offence.
- (2) The purposes are—
- (a) the purpose of procuring the issue, variation or transfer of a licence, or
  - (b) the purpose of complying with, or purporting to comply with, any obligation imposed by the provisions of this Part or the provisions of a licence.

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- (3) A person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

### *Enforcement notices*

## **90 Compliance notice**

- (1) If it appears to an enforcement authority that subsections (3) and (4) are satisfied in relation to a person carrying on an activity in its area, it may issue a compliance notice to that person.
- (2) A compliance notice is a notice requiring a person to take such steps (falling within subsection (5)(b)) as are specified in it.
- (3) This subsection is satisfied if a person holding a marine licence—
- (a) has carried on, or is carrying on, a licensable marine activity under that licence, and
  - (b) in carrying on that activity has failed, or is failing, to comply with a condition of the licence.
- (4) This subsection is satisfied if the carrying on of the activity has not caused, and is not likely to cause, any of the following—
- (a) serious harm to the environment;
  - (b) serious harm to human health;
  - (c) serious interference with legitimate uses of the sea.
- (5) A compliance notice must—
- (a) state the enforcement authority's grounds for believing that subsections (3) and (4) are satisfied;
  - (b) require the person to take such steps as the authority considers appropriate to ensure that the condition in question is complied with;
  - (c) state the period before the end of which those steps must be taken.

## **91 Remediation notice**

- (1) If it appears to an enforcement authority that each of subsections (3) to (5) is satisfied in relation to a person carrying on an activity in its area, it may issue a remediation notice to that person.
- (2) A remediation notice is a notice requiring a person to do either or both of the following—
- (a) to take such steps (falling within subsection (7)(b)) as are specified in it;
  - (b) to pay to the enforcement authority such sums (falling within subsection (7)(c)) as are specified in it.
- (3) This subsection is satisfied if a person has carried on, or is carrying on, a licensable marine activity.
- (4) This subsection is satisfied if the carrying on of the activity has involved, or involves, the commission of an offence under section 85(1).

- (5) This subsection is satisfied if the carrying on of the activity has caused, or is causing or is likely to cause, any of the following—
- (a) harm to the environment;
  - (b) harm to human health;
  - (c) interference with legitimate uses of the sea.
- (6) Before issuing a remediation notice, the enforcement authority must consult the person to whom it is proposed to be issued as to the steps or, as the case may be, the sum to be specified in the notice.
- (7) A remediation notice—
- (a) must state the enforcement authority’s grounds for believing that each of subsections (3) to (5) is satisfied;
  - (b) may require the person to take such remedial or compensatory steps as the authority considers appropriate;
  - (c) may require the person to pay a sum representing the reasonable expenses of any remedial or compensatory steps taken, or to be taken, by the enforcement authority or the appropriate licensing authority (whether or not under section 106);
  - (d) must state the period before the end of which those steps must be taken or, as the case may be, that sum must be paid.
- (8) In subsection (7)(b) and (c) “remedial or compensatory steps” means steps taken (or to be taken) for any one or more of the purposes mentioned in subsection (9) (whether or not the steps are to be taken at or near the place where the harm or interference mentioned in subsection (5) has been, is being, or is likely to be, caused or the activity in respect of which the notice is issued is or has been carried on).
- (9) The purposes are—
- (a) protecting the environment;
  - (b) protecting human health;
  - (c) preventing interference with legitimate uses of the sea;
  - (d) preventing or minimising, or remedying or mitigating the effects of, the harm or interference mentioned in subsection (5);
  - (e) restoring (whether in whole or in part) the condition of any place affected by that harm or interference to the condition, or a condition reasonably similar to the condition, in which the place would have been had the harm or interference not occurred;
  - (f) such purposes not falling within the preceding paragraphs as the enforcement authority considers appropriate in all the circumstances of the case.

## **92 Further provision as to enforcement notices**

- (1) A compliance notice or remediation notice—
- (a) must be served on any person carrying on, or in control of, the activity to which the notice relates, and
  - (b) if a marine licence has been granted in relation to that activity, may also be served on the licensee.
- (2) An enforcement authority may by a further notice—
- (a) revoke a compliance notice or remediation notice;

- (b) vary a compliance notice or remediation notice so as to extend the period specified in accordance with section 90(5)(c) or, as the case may be, section 91(7)(d).
- (3) A person who fails to comply with—
  - (a) a compliance notice, or
  - (b) a remediation notice,
 commits an offence.
- (4) A person guilty of an offence under subsection (3) is liable—
  - (a) on summary conviction, to a fine not exceeding £50,000;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.
- (5) A sum specified in a remediation notice by virtue of section 91(7)(c) is recoverable as a civil debt.

*Civil sanctions***93 Fixed monetary penalties**

- (1) The appropriate licensing authority for any area may by order make provision to confer on the appropriate enforcement authority for that area the power by notice to impose on a person in relation to an offence under this Part a fixed monetary penalty.
- (2) Provision under this section may only confer such a power in relation to a case where the enforcement authority is satisfied beyond reasonable doubt that the person has committed the offence.
- (3) For the purposes of this Part a “fixed monetary penalty” is a requirement to pay to the enforcement authority a penalty of a prescribed amount.
- (4) The amount of the fixed monetary penalty that may be imposed in relation to an offence may not exceed the maximum amount of the fine that may be imposed on summary conviction for that offence.
- (5) In this section “prescribed” means prescribed in an order made under this section.

**94 Fixed monetary penalties: procedure**

- (1) Provision under section 93 must secure the results in subsection (2).
- (2) Those results are that—
  - (a) where the enforcement authority proposes to impose a fixed monetary penalty on a person, the authority must serve on that person a notice of what is proposed (a “notice of intent”) which complies with subsection (3),
  - (b) the notice of intent also offers the person the opportunity to discharge the person’s liability for the fixed monetary penalty by payment of a prescribed sum (which must be less than or equal to the amount of the penalty),
  - (c) if the person does not so discharge liability—
    - (i) the person may make written representations and objections to the enforcement authority in relation to the proposed imposition of the fixed monetary penalty, and

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- (ii) the enforcement authority must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,
  - (d) where the enforcement authority decides to impose the fixed monetary penalty, the notice imposing it (“the final notice”) complies with subsection (5), and
  - (e) the person on whom a fixed monetary penalty is imposed may appeal against the decision to impose it.
- (3) To comply with this subsection the notice of intent must include information as to—
- (a) the grounds for the proposal to impose the fixed monetary penalty,
  - (b) the effect of payment of the sum referred to in subsection (2)(b),
  - (c) the right to make representations and objections,
  - (d) the circumstances in which the enforcement authority may not impose the fixed monetary penalty,
  - (e) the period within which liability to the fixed monetary penalty may be discharged, which must not exceed the period of 28 days beginning with the day on which the notice of intent is received, and
  - (f) the period within which representations and objections may be made, which must not exceed the period of 28 days beginning with the day on which the notice of intent is received.
- (4) Provision pursuant to subsection (2)(c)(ii)—
- (a) must secure that the enforcement authority may not decide to impose a fixed monetary penalty on a person where the authority 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 to be imposed, and
  - (b) may include provision for other circumstances in which the enforcement authority may not decide to impose a fixed monetary penalty.
- (5) To comply with this subsection the final notice referred to in subsection (2)(d) must include information as to—
- (a) the grounds for imposing the penalty,
  - (b) how payment may be made,
  - (c) the period within which payment must be made,
  - (d) any early payment discounts or late payment penalties,
  - (e) rights of appeal, and
  - (f) the consequences of non-payment.
- (6) Provision pursuant to subsection (2)(e) must secure that the grounds on which a person may appeal against a decision of the enforcement authority include the following—
- (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unreasonable.
- (7) In this section “prescribed” means prescribed in an order made under section 93.

**95 Variable monetary penalties**

- (1) The appropriate licensing authority for any area may by order make provision to confer on the appropriate enforcement authority for that area the power by notice to impose on a person in relation to an offence under this Part a variable monetary penalty.
- (2) Provision under this section may only confer such a power in relation to a case where the enforcement authority is satisfied beyond reasonable doubt that the person has committed the offence.
- (3) For the purposes of this Part a “variable monetary penalty” is a penalty of such amount as the enforcement authority may in each case determine.

**96 Variable monetary penalties: procedure**

- (1) Provision under section 95 must secure the results in subsection (2).
- (2) Those results are that—
  - (a) where the enforcement authority proposes to impose a variable monetary penalty on a person, the enforcement authority must serve on that person a notice (a “notice of intent”) which complies with subsection (3),
  - (b) that person may make written representations and objections to the enforcement authority in relation to the proposed imposition of the penalty,
  - (c) after the end of the period for making such representations and objections, the enforcement authority must decide whether to impose a penalty and, if so, the amount of the penalty,
  - (d) where the enforcement authority decides 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 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 enforcement authority 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 pursuant to subsection (2)(c)—
  - (a) must secure that the enforcement authority may not decide to impose a penalty on a person where the enforcement authority is satisfied that the person would not, by reason of any defence raised by that person, be liable to be convicted of the offence in relation to which the penalty is proposed to be imposed, and
  - (b) may include provision for other circumstances in which the enforcement authority may not decide to impose a penalty.
- (5) Provision under 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,



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- (b) the enforcement authority to be able to accept or reject such an undertaking, and
  - (c) the enforcement authority to take any undertaking so accepted into account in its decision.
- (6) To comply with this subsection the final notice referred to in subsection (2)(d) must include information as to—
- (a) the grounds for imposing the penalty,
  - (b) how payment may be made,
  - (c) the period within which 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 pursuant to subsection (2)(e) must secure that the grounds on which a person may appeal against a decision of the enforcement authority include the following—
- (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the amount of the penalty is unreasonable;
  - (d) that the decision was unreasonable for any other reason.

## **97 Further provision about civil sanctions**

Schedule 7 (which makes further provision about civil sanctions) has effect.