
WELSH STATUTORY INSTRUMENTS

2011 No. 924

The Marine Licensing (Civil Sanctions) (Wales) Order 2011

PART 3

Variable monetary penalties

Power to impose variable monetary penalty

13.—(1) The enforcement authority may by notice impose a variable monetary penalty on a person in relation to—

- (a) an offence under section 85(1) of the Act (breach of requirement for, or conditions of, a licence);
- (b) an offence under section 89(1) of the Act (information);
- (c) an offence under section 92(3)(b) of the Act (failure to comply with a remediation notice).

(2) But before doing so, the enforcement authority must be satisfied beyond reasonable doubt that the person has committed the offence.

Notice of intent

14.—(1) Where the enforcement authority proposes to impose a variable monetary penalty on a person, the authority must serve on that person a notice (a “notice of intent”).

(2) The notice of intent must include information as to—

- (a) the grounds for the proposal to impose the variable monetary penalty;
- (b) the amount of the proposed variable monetary penalty;
- (c) the circumstances in which the enforcement authority may not impose the variable monetary penalty; and
- (d) the period, referred to in article 15, within which representations and objections may be made.

(3) But the enforcement authority may not serve a notice of intent on a person in relation to any act or omission where—

- (a) a fixed monetary penalty has been imposed on that person in relation to that act or omission; or
- (b) the person has discharged liability for a fixed monetary penalty in relation to that act or omission in accordance with article 6.

Representations and objections

15. A person on whom a notice of intent is served may, within the period of 28 days beginning with the day on which the notice of intent is received, make written representations and objections to the enforcement authority in relation to the proposed imposition of the penalty.

Undertakings to benefit affected persons

16.—(1) A person on whom a notice of intent is served may 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.

(2) The enforcement authority may accept or reject such an undertaking.

Imposition of variable monetary penalty

17.—(1) After the end of the period for making representations and objections, the enforcement authority must decide whether to impose a variable monetary penalty and, if so, the amount of the penalty.

(2) In so deciding, the enforcement authority must take into account any undertaking accepted under article 16(2).

(3) The enforcement authority must not decide to impose a variable monetary penalty on a person where the 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.

(4) Where the enforcement authority decides to impose a variable monetary penalty, the notice imposing it (the “final notice”) must include information as to—

- (a) the grounds for imposing the penalty;
- (b) the amount of the penalty;
- (c) how payment may be made;
- (d) the period within which payment must be made;
- (e) rights of appeal; and
- (f) the consequences of non-payment.

(5) This article is subject to article 30.

Payment dates

18.—(1) Where no appeal is brought against the decision to impose a variable monetary penalty, the penalty must be paid within the period of 56 days beginning with the day on which the final notice is received, or such later period as the enforcement authority may agree in writing.

(2) Where an appeal is brought but a variable monetary penalty remains payable following that appeal, the penalty must be paid within the period of 28 days beginning with the day the appeal is determined.

Restrictions on other sanctions

19. Where a variable monetary penalty is imposed on a person—

- (a) that person may not at any time be convicted of the offence in relation to which the penalty was imposed in respect of the act or omission giving rise to the penalty;
- (b) the enforcement authority may not issue a compliance notice to that person in respect of the act or omission giving rise to the penalty.

Appeals against variable monetary penalties

20.—(1) The person on whom a variable monetary penalty is imposed may appeal against the decision as to the imposition or amount of the penalty.

- (2) The grounds of appeal are—
- (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;
 - (e) any other reason permitted by the First-tier Tribunal.

Enforcement costs recovery notices

21.—(1) The enforcement authority may by notice require a person on whom a variable monetary penalty is imposed to pay the costs incurred by the enforcement authority in relation to the imposition of the penalty up to the time of its imposition.

(2) The notice must specify the amount required to be paid.

(3) The person on whom the notice is served may require the enforcement authority to provide a detailed breakdown of the amount specified in the notice.

(4) The person required to pay costs is not liable to pay any costs shown by the person to have been unnecessarily incurred.

(5) In this article, “costs” include in particular—

- (a) investigation costs;
- (b) administration costs;
- (c) costs of obtaining expert advice (including legal advice).

Appeals against enforcement costs recovery notices

22. The person required under article 21 to pay costs may appeal against the decision—

- (a) to impose the requirement to pay costs;
- (b) as to the amount of those costs.