WELSH STATUTORY INSTRUMENTS

2011 No. 924 (W.133)

ENVIRONMENTAL PROTECTION, WALES
MARINE POLLUTION, WALES
TRIBUNALS AND INQUIRIES, WALES

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

Made - - - -	*22 March 2011*
Coming into force - -	*6 April 2011*

The Welsh Ministers, as the appropriate licensing authority under section 113(4)(b) of the Marine and Coastal Access Act 2009(**1**), make the following Order in exercise of the powers conferred by sections 93, 95 and 316(1)(b) of, and paragraphs 2, 3, 4, 5, 6, 7, 9(1) and 11(1) and (4) of Schedule 7 to, that Act.

The Welsh Ministers have carried out a consultation in accordance with paragraph 8 of Schedule 7 to that Act.

In accordance with section 316(6)(b) and (7)(d) of that Act, a draft of this Order has been laid before, and approved by a resolution of, the National Assembly for Wales.

PART 1

Introductory provisions

Title and commencement

1.—(1) The title of this Order is the Marine Licensing (Civil Sanctions) (Wales) Order 2011.

(2) This Order comes into force on 6 April 2011.

Application

2. This Order applies in relation to any licensable marine activity for which the Welsh Ministers are—

(**1**) 2009 c. 23.

(a) the appropriate licensing authority(**2**) (and the reference in article 25(2) to "the licensing authority" is to be read accordingly);

(b) an enforcement authority(**3**) (and references in this Order to "the enforcement authority" are to be read accordingly).

Interpretation

3. In this Order—

"the Act" ("*y Ddeddf*") means the Marine and Coastal Access Act 2009;

"civil sanction" ("*sancsiwn sifil*") means a fixed monetary penalty or a variable monetary penalty(**4**);

"final notice" ("*hysbysiad terfynol*")—

(a) in relation to a fixed monetary penalty, has the meaning given by article 8(3);

(b) in relation to a variable monetary penalty, has the meaning given by article 17(4);

"notice of intent" ("*hysbysiad o fwriad*")—

(a) in relation to a fixed monetary penalty, has the meaning given by article 5(1);

(b) in relation to a variable monetary penalty, has the meaning given by article 14(1).

PART 2

Fixed monetary penalties

Power to impose fixed monetary penalty

4.—(1) The enforcement authority may by notice impose a fixed monetary penalty on a person in relation to an offence under section 85(1) of the Act (breach of requirement for, or conditions of, a licence).

(2) But before doing so, the enforcement authority must 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 £300 in any other case.

Notice of intent

5.—(1) Where the enforcement authority proposes to impose a fixed monetary penalty on a person, it must serve on that person a notice of what is proposed (a "notice of intent").

(2) The notice must offer the person the opportunity to discharge the person's liability for the fixed monetary penalty by payment of 50% of the amount of the penalty within the period of 28 days beginning with the day on which the notice of intent is received.

(3) The notice must also include information as to—

(a) the grounds for the proposal to impose the fixed monetary penalty;

(b) the amount of the proposed fixed monetary penalty;

(**2**) By virtue of section 113(4)(b) of the Marine and Coastal Access Act 2009, the Welsh Ministers are the appropriate licensing authority as respects anything done in the course of carrying on licensable marine activities in relation to Wales and the Welsh inshore region other than activities for which the Secretary of State is the appropriate licensing authority by virtue of sections 113(4)(a) and (5) of that Act. *See* section 322(1) for the definition of the Welsh inshore region.

(**3**) The Welsh Ministers are an enforcement authority for the areas for which the Welsh Ministers are the appropriate licensing authority for the purposes of this Order (*see* section 114(2) of the Marine and Coastal Access Act 2009).

(**4**) *See* section 115(1) of the Act for a definition of these terms.

(c) the effect of payment of the sum referred to in article 6;

(d) the right to make representations and objections;

(e) the circumstances in which the enforcement authority may not impose the fixed monetary penalty;

(f) the period, referred to in article 6, within which liability to the fixed monetary penalty may be discharged;

(g) the period, referred to in article 7(1), within which representations and objections may be made.

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

(a) a variable monetary penalty has been imposed on that person in relation to that act or omission;

(b) a stop notice(**5**) has been served on that person in relation to that act or omission.

Discharge of liability

6. A person who receives a notice of intent may discharge liability for the fixed monetary penalty by paying to the enforcement authority 50% of the amount of the penalty within the period of 28 days beginning with the day on which the notice of intent is received.

Representations and objections

7.—(1) 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 fixed monetary penalty.

(2) This article does not apply where a person has discharged liability under article 6.

Imposition of fixed monetary penalty

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

(2) The enforcement authority must 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.

(3) Where the enforcement authority decides to impose the fixed 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) any early payment discounts or late payment penalties;

(f) rights of appeal; and

(g) the consequences of non—payment.

(4) This article does not apply where a person has discharged liability under article 6.

(**5**) *See* section 115(1) of the Act for a definition of this term.

(5) This article is subject to article 30 (amending or withdrawing final notices to rescind or reduce a penalty or to correct errors).

Discount for early payment

9. A person who makes representations or objections in accordance with article 7 may discharge liability for the fixed monetary penalty by paying to the enforcement authority 50% of the amount of the penalty within the period of 28 days beginning with the day on which the final notice is received.

Payment dates and late payment penalties

10.—(1) Where no appeal is brought against the decision to impose a fixed monetary penalty, the penalty must be paid within the period of 56 days beginning with the day on which the final notice is received.

(2) Where paragraph (1) applies, if a fixed monetary penalty is not paid within the period of 56 days, the person liable to pay the fixed monetary penalty is also liable to pay to the enforcement authority a late payment penalty of 50% of the amount of the fixed monetary penalty.

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

(4) Where paragraph (3) applies, if a fixed monetary penalty is not paid within the period of 28 days, the person liable to pay the fixed monetary penalty is also liable to pay to the enforcement authority a late payment penalty of 50% of the amount of the fixed monetary penalty.

Restrictions on other sanctions

11.—(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 the person in respect of the act or omission to which the notice relates before the end of the period of 28 days beginning with the day on which the notice of intent is received; and

(b) if the person discharges liability for the fixed monetary penalty in accordance with article 6, the person may not at any time be convicted of the offence to which the notice of intent relates in relation to that act or omission.

(2) Where a fixed 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 or a remediation notice(**6**) to that person in respect of the act or omission giving rise to the penalty.

(3) The enforcement authority may not serve a stop notice 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.

(**6**) *See* section 115(1) of the Act for a definition of these terms.

Appeals against fixed monetary penalties

12.—(1) The person on whom a fixed monetary penalty is imposed may appeal against the decision to impose it(**7**).

(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 decision was unreasonable;

(d) any other reason permitted by the First-tier Tribunal.

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.

(**7**) *See* article 28 for further provisions relating to appeals.