STATUTORY RULES OF NORTHERN IRELAND

2015 No. 279

ENVIRONMENTAL PROTECTION

MARINE CONSERVATION

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

Laid before the Assembly in draft

Made - - - -	*18th June 2015*
Coming into operation	*19th June 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 19th June 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 (N.I.)
(**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 where representations or objections are made

8. Where a decision is made to impose a fixed monetary penalty on a person who has made representations or objections in accordance with Article 6, that person's liability to the penalty is discharged if 50% of the amount to the penalty is paid within the period of 28 days beginning with the date on which the penalty is served; otherwise Article 9 applies.

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—