STATUTORY RULES OF NORTHERN IRELAND

2011 No. 81

ENVIRONMENTAL PROTECTION

MARINE LICENSING

The Marine Licensing (Civil Sanctions) Order (Northern Ireland) 2011

Laid before the Assembly in draft

Made - - - -	*22nd March 2011*
Coming into operation	*6th April 2011*

The Department of the Environment, as the appropriate licensing authority under section 113(6)(b) of the Marine and Coastal Access Act 2009(**1**), in exercise of the powers conferred by sections 93(1), 95(1) and 316(1)(b) and having carried out a consultation in accordance with paragraph 8 of Schedule 7 to that Act, makes the following Order.

PART 1

Introductory provisions

Citation and commencement

1. This Order may be cited as the Marine Licensing (Civil Sanctions) Order (Northern Ireland) 2011 and comes into operation on 6th April 2011.

Interpretation

2.—(1) In this Order—

"the Act" means the Marine and Coastal Access Act 2009;

"Appeals Commission" means the Water Appeals Commission for Northern Ireland as specified in Article 292 (Water Appeals Commission) of the Water and Sewerage Services (Northern Ireland) Order 2006((**2**)

"civil sanction" means a fixed monetary penalty or variable monetary penalty;

(**1**) 2009 c.23.
(**2**) S.I. 2006/3336 (N.I. 21)

"final notice"—

(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);

"licence" means a marine licence;

"notice of intent"—

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

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

(2) The Interpretation Act (Northern Ireland) 1954(**3**) applies to this Order as it applies to an Act of the Assembly.

Application

3. This Order applies in relation to Northern Ireland and the Northern Ireland inshore region, and any licensable marine activity carried on in Northern Ireland or the Northern Ireland inshore region, for which the Department of the Environment is—

(a) the appropriate licensing authority; or

(b) an appropriate enforcement authority (and references in this Order to "the enforcement authority" are to be read accordingly)(**4**).

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) The enforcement authority must, before imposing a 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 £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;

(**3**) 1954 c.33 (N.I.).

(**4**) Under sections 113(6)(a) and 114(2) of the Act the Secretary of State is, respectively, the licensing authority and the enforcement authority in respect of anything done in the course of carrying on any activity which relates to a matter which is an excepted matter, by virtue of paragraph 4 of Schedule 2 to the Northern Ireland Act 1998 (c. 47) (defence of the realm etc.), in Northern Ireland and the Northern Ireland inshore region.

(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; and

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

(4) 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; or

(b) a stop notice 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 served.

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 served, 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.

Discount for early payment

9. A person who makes representations or objections in accordance with Article 7 may discharge liability to 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 served.

(2) 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) 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 served; and

(b) if the person so discharges liability, 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; and

(b) the enforcement authority may not serve a compliance notice or a remediation notice on 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 to a fixed monetary penalty in relation to that act or omission in accordance with Article 6.

Appeals against fixed monetary penalties

12.—(1) Subject to Article 28, the person on whom a fixed monetary penalty is imposed may appeal against the decision to impose it.

(2) The grounds for 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; and

(d) any other reason permitted by the Appeals Commission.

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 that Act (information); and

(c) an offence under section 92(3)(b) of that Act (offence of failure to comply with a remediation notice).

(2) The enforcement authority must, before imposing a penalty under paragraph (1), 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) 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 to 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 served, 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.