

# **Northern Ireland Guidance Enforcement under Part 4, of the Marine and Coastal Access Act, 2009**

**May 2016**



Department of  
**Agriculture, Environment  
and Rural Affairs**

[www.daera-ni.gov.uk](http://www.daera-ni.gov.uk)

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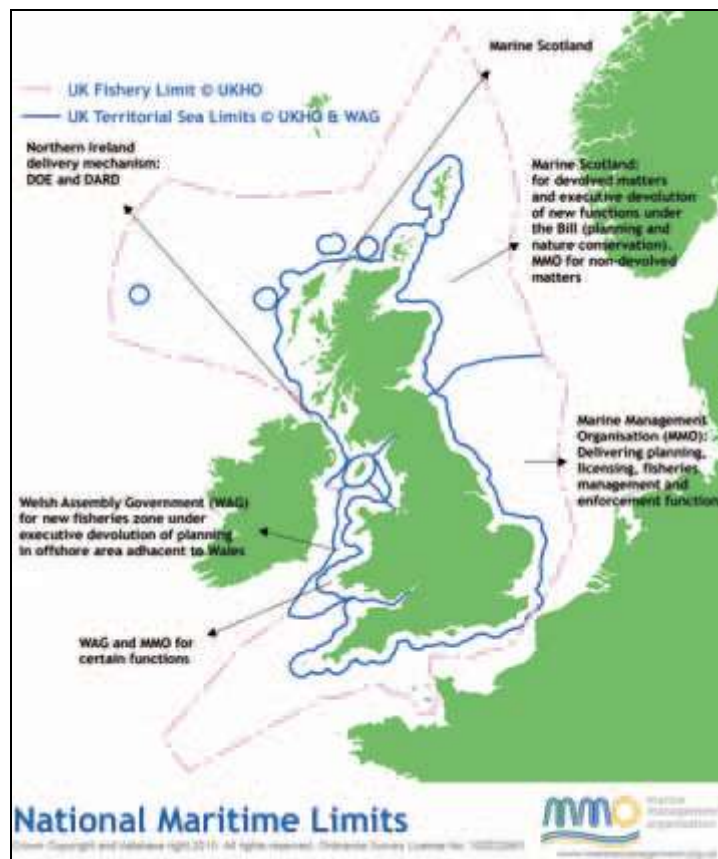
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## 1.0 Introduction

The enforcement authority for marine licensing in Northern Ireland is the Department of Agriculture, Environment and Rural Affairs (DAERA) Marine and Fisheries Division.

### 1.1 About this guidance

This guidance deals with all aspects of enforcement of the new marine licensing system which was introduced in April 2011 under the Marine and Coastal Access Act 2009 (the 'Act') and the accompanying secondary legislation. It applies only to activities where the Agriculture, Environment and Rural Affairs for Northern Ireland (DAERA) is the licensing authority, that is, activities within the Northern Ireland in-shore region.



The guidance is aimed at both applicants (i.e. those who carry out or plan to carry out activities at sea), and Marine and Fisheries Division who handle the licensing and enforcement of those activities. It will also be of interest to people interested in marine licensing enforcement.

The objective of the licensing system is to encourage the sustainable development of the marine environment in a way that ensures the protection of the environment, human health, and prevents interference with legitimate uses of the sea. Non-compliance with licenses may also create competitive advantage to operators not acting within the law.

This guidance sets out in more detail the range of enforcement options available to Marine and Fisheries Division under the Marine and Coastal Access Act 2009, the circumstances in which they will be used and how they will be applied. The guidance includes the following:

- a) The circumstances in which monetary penalties are likely to be imposed,
- b) The circumstances in which they may not be imposed,
- c) In relation to a fixed monetary penalty, the amount of the penalty, and how liability for the penalty may be discharged and the effect of discharge,
- d) In relation to a variable monetary penalty, the matters likely to be taken into account by the Marine and Fisheries Division in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance)
- e) Rights to make representations and objections and rights of appeal,
- f) How it will recover costs in relation to variable monetary penalties.

Sections 3 and 4 of this guidance cover the introduction of a range of enforcement tools (statutory notices and monetary penalties) introduced by the Act and the accompanying secondary legislation. The new tools will enable Marine and Fisheries Division to enforce in a proportionate way when applicants or other persons do not comply with the law. It will provide a more level playing field for businesses that are fully compliant with legislation. This document sets out how these enforcement tools will be applied in practice.

Section 5 outlines the process for appeals against monetary penalties and statutory notices. This ability to appeal is in line with the principles of transparency and fairness which underpin the new marine licensing system.

The introduction of statutory notices is set out in the Act. Monetary penalties and appeals against statutory notices are introduced through the accompanying secondary legislation:-

- The Marine Licensing (Civil Sanctions) Order (Northern Ireland) 2011
- The Marine Licensing (Appeals) Regulations (Northern Ireland) 2011

This guidance covers both the provisions in the Act itself and the secondary legislation. It satisfies the requirements under Schedule 7 of the Act for the Department to consult on and publish guidance on the new enforcement provisions and the proposed use of monetary penalties.

Any changes to this guidance will be consulted on and published.

This guidance only applies where Marine and Fisheries Division is the licensing authority. Marine and Fisheries Division has responsibility for most marine licensing functions except those in relation to oil and gas-related activities in the Northern Ireland in-shore region. Marine and Fisheries Division is also responsible for enforcing those activities it licenses. Enforcement is carried out through the Marine Strategy and Licensing Team in the wider DAERA Environment Group.

Separate guidance on applying for a marine licence is available from Marine and Fisheries Division, Marine Strategy and Licensing team, 2<sup>nd</sup> Floor, Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast, BT7 2JA, Tel: 028 9056 9247.

## **2.0 Background and general approach to the use of the new enforcement tools**

This section provides some background to the introduction of the new enforcement tools and sets out the general approach to be taken by the Marine and Fisheries Division when using these tools.

### **2.1 Background**

The Department of Agriculture, Environment and Rural Affairs is committed to ensuring a fairer and more proportionate approach to enforcement, in line with the Northern Ireland Better Regulation Strategy and the key principles of better regulation:

- transparency;
- proportionality;
- consistency;
- helping to target action on cases where action is needed; and
- licensing authority accountability.

The Department published its Position Statement on Better Regulation, “[Better Regulation for a Better Environment](#)”, in March 2008. This outlined the approach to delivering simple and effective regulation and achieving better standards for the environment through Better Regulation.

The Better Regulation Programme encompasses a range of initiatives to modernise regulation to deliver more effective protection for the environment: through more accessible guidance; streamlined, risk-based permitting and inspections; and proportionate enforcement.

Central to more effective enforcement is access to, and use of, more flexible penalties and sanctions which will enable more proportionate responses in cases of regulatory non-compliance. These principles are part of better regulation which recommends using fixed and variable penalties to enforce environmental legislation. Provisions in the Marine and Coastal Access Act 2009 are generally adapted from the Regulatory Enforcement and Sanctions (RES) Act 2008 in order to apply them to the marine area.

Advice and guidance remain at the core of a fair and proportionate system of enforcement and will in many cases be sufficient to achieve Marine and Fisheries Division’s objectives. Marine and Fisheries Division will use the new enforcement

tools where necessary but prosecution will remain the appropriate response for the most serious offences.

## **2.2 General approach to using the new enforcement tools**

### **General principles**

When responding to marine licensing offences. In the first instance, Marine and Fisheries Division will examine the principles and spirit of the marine licensing system; that is to have regard to the need to protect the environment, human health and to prevent interference with legitimate uses of the sea.

Some additional principles which apply to the use of enforcement tools are that they should:

- encourage individuals or companies back into compliance as soon as possible;
- remove risks and prevent harm from occurring or continuing;
- ensure damage is restored, restitution is provided to local communities and that the polluter pays;
- ensure a level playing field, removing financial benefit;
- ensure proportionality to the offence, harm and the facts of the case;
- deter non-compliance, and encourage behavioural change;
- ensure future compliance and reductions in future risks;
- secure better results or same results at lower cost and
- avoid 'unintended consequences'.

Marine and Fisheries Division, as enforcement authority is required to publish guidance on the use of the new enforcement tools and an enforcement policy. The enforcement authority involved businesses and other stakeholders in the development of this guidance and will consult on any revisions to it.

The decision on which enforcement option is appropriate in a particular situation is an operational matter for Marine and Fisheries Division which will take decisions following consideration of the specific facts of the case and in line with its enforcement policy. Its approach will be consistent with the principles above and the guidance in Sections 3 and 4. Annex 3 contains a copy of the prosecution/enforcement case review record template. This document is completed for each case investigated; this will help inform any decision taken.

Appointed officers will inspect and gather evidence and the Marine and Fisheries Division will decide the most appropriate sanction or course of action depending on the circumstances of each case. Marine Enforcement Officers appointed by Marine and Fisheries Division will carry out risk-based inspections, gather evidence and, when appropriate, issue certain statutory notices. Marine and Fisheries Division will be able to review each case and take forward any further enforcement action if it decides either is appropriate.

This guidance sets out the process for considering relevant factors and making enforcement decisions. This will ensure a clear and transparent process for applying the new enforcement tools outlined in this document.

### **2.3 Availability of enforcement tools**

An enforcement tool can only be used for a particular marine licensing offence where the Act or accompanying secondary legislation provides for an enforcement mechanism for that offence. Enforcement action can be taken against any person who commits a relevant offence. The use of 'person' in this document includes a business, a landowner or a private individual (see Glossary at Annex 3).

Relevant offences and appropriate enforcement actions which may be applicable are shown in **Table 1** overleaf.

### **2.4 Burden of proof**

In the use of civil sanctions, the burden of proof in an appeal hearing will lie with Marine and Fisheries Division. Where an appeal involves an alleged offence, Marine and Fisheries Division will have to prove the commitment of the offence beyond reasonable doubt. In all other cases, i.e. where there is no dispute as to the alleged offence, the Water Appeals Commission (WAC) (see Section 5 on appeals) will determine the standard of proof.

### **2.5 Revenue from penalties**

All revenue from penalties is paid into the Consolidated Fund of Northern Ireland and is not available to the enforcement authority imposing the penalties. This provides an assurance that Marine and Fisheries Division will not use monetary penalties to raise revenue for its own purpose.

### **2.6 Fair process**

A fair process is essential to the effective use of the new enforcement mechanisms. The right to make written representations against an intended monetary penalty is available for any person and is covered in more detail in Section 4. Section 5 provides detail on the arrangements for appeals against the enforcement tools.

## **3.0 Statutory notices**

<p>This section describes the statutory notices available to enforcement authorities, explaining when each is appropriate and how they are to work in practice.</p>
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**Table 1:** Relevant offences and appropriate enforcement actions

	Offence						
	Breach of requirement for, or conditions of, a licence (section 85(1))	Information offence (making a statement which is false or misleading etc) (section 89(1))	Failure to comply with a compliance notice (section 92(3)(a))	Failure to comply with a remediation notice (section 92(3)(b))	Failure to comply with a stop notice (section 103(3))	Failure to comply with an emergency safety notice (section 105(3))	
Enforcement action available	Compliance notice	✓					
	Remediation notice	✓					
	Stop notice	✓					
	Emergency safety notice	✓					
	Revocation notice	✓					
	Suspension notice	✓					
	Variation notice	✓					
	Fixed Monetary Penalty	✓					
	Variable Monetary Penalty	✓	✓		✓		
	Prosecution	✓	✓	✓	✓	✓	✓

## Introduction

Marine and Fisheries Division, as enforcement authority, will be able to use a range of statutory notices where:

- a person is in breach of their licence under section 85(1) of the Marine and Coastal Access Act 2009, and/or
- where there is a risk that their activity or development is causing harm to the environment or human health, or interferes with legitimate uses of the sea (e.g. navigational interference).

Marine and Fisheries Division may issue statutory notices to order specific action to be taken.

### What statutory notices are available?

**Compliance notice:** this can be used in less serious situations to compel a person to come back into compliance (s.90 of the Act).

**Remediation notice:** this may require a person to take specific steps to put right or compensate for any harm they may have caused (s.91 of the Act).

**Stop notice:** this is an emergency notice which can be used to stop seriously harmful activities urgently (s.102 of the Act).

**Emergency safety notice:** this can be used to compel a person to make safe a serious navigational safety hazard (s.104 of the Act).

**Revocation notice:** this may be used for the withdrawal of a compliance, remediation, stop or emergency safety notice that has already been served (s.92(2), s.103(2a), s.105(2a) of the Act), or to remove an existing marine licence in specific, limited circumstances which include instances of non-compliance (s.72 of the Act).

**Variation notice:** this can be used to extend the period in an existing compliance, remediation, stop or emergency safety notice in which action must be taken or a sum of money is to be paid (s.92 (2), s.103 (2b), s.105 (2b) of the Act), or to vary the conditions of a marine licence in specific, limited circumstances which include instances of non-compliance (s.72 of the Act).

**Suspension notice:** this is used where the Marine and Fisheries Division wishes to suspend a marine licence for a specified length of time in specific, limited circumstances which include instances of non-compliance (s.72 of the Act).

**Table 2:** The following table sets out when compliance, remediation, stop and emergency safety notices may be used:

Type of Notice	Activity is causing or likely to cause...		Licensable activity is...	
	harm or interference	<u>serious</u> harm or <u>serious</u> interference	carried out under a marine licence	<u>not</u> carried out under a marine licence
Compliance notice	No	No	Yes (but only if conditions not complied with)	No (as in no licence at all)
Remediation notice	Yes	Yes	Yes (but activity involves offence under s. 85(1))	Yes
Stop notice	No	Yes	Yes (whether or not in accordance with that licence)	Yes
Emergency safety notice	No	Yes (interference only)	Yes (whether or not in accordance with that licence)	Yes

Where a person has been served with a statutory notice, that person has the right to appeal against its imposition. The appeals procedure is covered in more detail in **Section 5**.

### 3.1 Compliance notice

A compliance notice is a written notice issued by the Marine and Fisheries Division where a licence holder has failed, or is failing, to comply with a licence condition.

The compliance notice will require a person to take specified steps within a stated period to ensure that the condition is complied with and must contain the reasons why Marine and Fisheries Division served the notice.

### 3.2 What steps might a compliance notice require?

A compliance notice would require steps to address a failure to comply with a specified condition of a licence and might include the following:

- specific investment such as a bund to prevent leaks from tanks of chemicals entering the environment;
- a system of maintenance for critical equipment;

- change or updating of a particular process;
- training of relevant staff.

### **3.3 Remediation notice**

A remediation notice is a written notice issued by Marine and Fisheries Division which requires a person to pay a sum of money to the enforcement authority and/or take steps to restore or compensate for harm caused by their non-compliance. Any sum must represent the reasonable expenses of any remedial or compensatory steps taken, or to be taken, by the Marine and Fisheries Division (S.91 (7c) of the Act).

A remediation notice can be served where a person is carrying out a licensable activity without a marine licence, or is failing to carry out a licensable activity in accordance with the conditions of a marine licence.

### **3.4 When is a remediation notice appropriate?**

Some offences will result in environmental damage; in these cases a remediation notice may be appropriate to require specific action to be taken to address, or compensate for that damage. Damage to the environment may involve a temporary or sustained loss of environmental quality (for example in air, water or soil quality) or, more widely, in the resources and services provided by ecosystems. Remediation notices would not be appropriate where action is taken under the Environmental Damage Regulations 2009 (<http://www.defra.gov.uk/environment/policy/liability/pdf/quick-guide-regs09.pdf>) which provides specific duties and powers to respond to the most serious cases.

Before issuing a remediation notice, Marine and Fisheries Division must consult the person on whom it is to be issued about the actions or, as the case may be, the payment (see paragraph 3.11 below) to be set out in the notice.

### **3.5 What steps might a remediation notice require?**

The “remedial or compensatory steps” which a remediation notice may require a person to take are:

- to protect the environment or human health, or to prevent interference with legitimate uses of the sea;
- to prevent, minimise, remedy or mitigate the effects of the harm or interference in question;
- to restore (whether in whole or in part) harm or interference caused by non-compliance, so that the position is restored, so far as possible, to what it would have been if no offence had been committed;
- to cover any other purpose which the Marine and Fisheries Division considers appropriate (in all circumstances);
- to pay a sum representing the costs of the Marine and Fisheries Division for taking remedial action in the operator’s stead.

A remediation notice may require steps to be taken at a site other than the one affected by the harm or interference. It may not be reasonably possible to restore whole or part of a site to the condition it would have been in had the harm or

interference not been caused. Steps may need to be taken at another site as considered more appropriate to compensate for the damage. This could occur, for instance, where steps to be taken would be disproportionately expensive compared to the gain achieved. Additionally the best course of action may be to allow the site to recover naturally over time.

Marine and Fisheries Division will have regard to what is proportionate when placing requirements in a remediation notice. In certain circumstances, for example, the costs of full restoration may be disproportionate to the benefits to be obtained. In suitable cases, consideration should be given to natural recovery. In some cases an undertaking may be welcomed, if offered. This may, for example, include restoration or enhancements to alternative areas or alternative natural resources where there are opportunities to do so. There may sometimes be advantages to such alternative approaches in terms of cost and/or environmental outcomes.

Typical undertakings might, for example, include:

- removing and/or treating contaminants to reduce impacts on natural resources or local communities;
- removing/protecting against other pressures on natural resources/services/local communities (e.g. other obstructions, non-native species and/or development-related pressures);
- re-stocking or re-introductions of damaged species (e.g. fish);
- seeding, planting or replanting vegetation;
- providing conservation staff resources to manage or maintain sites or introducing conservation measures or management to a site;
- developing and implementing strategic management plans;
- implementing restrictions to access, or improvements to access;
- providing monitoring capacity.

In some cases local communities may be affected by an offence where it is possible to take some restorative action. This could be a loss of amenity, damage to protected habitats or where there is nuisance with impacts such as the spread of chemicals or noise. Restoring these situations (i.e. levels of amenity, habitat, chemical treatment or removing noise) will be an important aspect of remediation. Marine and Fisheries Division may wish to seek local views to ensure that proposals take account of local circumstances.

A remediation notice should clearly identify:

- the damage or losses;
- the grounds on which the notice is issued on;
- the actions required to restore the position or compensatory measures to be taken;
- the period within which those actions should be taken.

Marine and Fisheries Division may also wish to specify the outcomes to be obtained and any monitoring requirements.

### **3.6 Remedial action taken by the Marine and Fisheries Division**

In the event that Marine and Fisheries Division cannot immediately identify the person who has committed an offence which is causing serious harm or interference, Marine and Fisheries Division may carry out any works that it deems to be necessary or expedient for any one or more of the following purposes (S.106 of the Act - Power to take remedial action):

- to protect the environment;
- to protect human health;
- to prevent interference with legitimate uses of the sea;
- to prevent or minimise, or remedy or mitigate the effects of, any harm or interference;
- to restore (whether in whole or in part) the condition of any place affected by any such 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.

If, or when, Marine and Fisheries Division identifies the person responsible for the offence that person will be liable to pay any costs incurred by Marine and Fisheries Division for the remedial work it has carried out.

### **3.7 Stop notice**

A stop notice is a written notice issued by Marine and Fisheries Division which prohibits a person from carrying out specified activities from a specific time and date and sets out the Marine and Fisheries Division's reasons for imposing it.

A stop notice can be served where a person is carrying out or likely to carry out, a licensable activity without a marine licence, or is failing to carry out a licensable activity in accordance with the conditions of a marine licence.

A stop notice may be issued in addition to any other statutory notice or Variable Monetary Penalty but may not be issued with a Fixed Monetary Penalty. Stop notices can also be served in combination with steps leading to a criminal prosecution (see Section 6 on Permitted Combinations of Enforcement Action).

### **3.8 When is a stop notice appropriate?**

A stop notice may only be served if a person is carrying on (or is likely to carry on) an activity that Marine and Fisheries Division is satisfied:

- is causing (or is likely to cause) serious harm to human health or the environment (including the health of animals and plants), or is creating (or likely to create) an imminent risk of such effects;
- is causing (or is likely to cause) serious interference with legitimate uses of the sea, or is creating (or likely to create) an imminent risk of such effects.

The notice must state the date and time from which the prohibition is to take effect and must allow a reasonable period for compliance proportionate to the case in question.

A stop notice ceases to have effect at the end of the period of 7 days (or less if a shorter period has been specified in the notice) beginning with the date on which the prohibition takes effect, but may be renewed for a period specified in a further notice. However, where a stop notice has been issued to a person carrying out an activity without a licence authorising that activity, the original notice will remain in force until that person has obtained a marine licence.

Marine and Fisheries Division may renew a stop notice more than once but not for a total period exceeding 35 days. If the threat still remains after that period, the licensing authority will have the option of revoking, suspending or varying the marine licence.

In weighing up whether it is in the public interest to impose a stop notice, Marine and Fisheries Division will have regard to any wider social impacts that may result, such as inconvenience to other sea-users or effects on habitats. In relevant cases, it will also consider whether imposing a stop notice would prevent an organisation from performing any statutory duties.

### **3.9 Process for using stop notices**

The Marine and Fisheries Division serves a stop notice in the circumstances outlined above. A stop notice may have to be issued as a matter of urgency. The stop notice must include:

- the grounds for serving the stop notice;
- the actions the person must take to comply with the stop notice;
- rights of appeal (**see Section 5**); and
- the consequences of non-compliance.

### **3.10 Emergency safety notice**

An emergency safety notice is a written notice issued by Marine and Fisheries Division requiring a person to take specified action from a specific date where it appears that serious interference with legitimate uses of the sea is occurring, or is likely to occur, in an area as a result of any marine licensable activity. It also covers any substantial and unforeseen change in the state or position of a marine licensable activity. The notice must state Marine and Fisheries Division's reasons for imposing it.

An emergency safety notice can be served where a person is carrying out a licensable activity without a marine licence, or is failing to carry out a licensable activity in accordance with the conditions of a marine licence.

The notice must state the date and time from which the prohibition is to take effect and must allow a reasonable period for compliance proportionate to the case in question.

The requirements in an emergency safety notice cover the following specific actions:

- (a) the provision of lights, signals or other aids to navigation;
- (b) the stationing of guard ships.

The Marine and Fisheries Division should consult with the Maritime and Coastguard Agency when determining the requirements to be contained within an emergency safety notice.

The Marine and Fisheries Division may also serve an emergency safety notice to any person on whom a stop notice has been served.

### **3.11 Revocation and variation of notices**

Marine and Fisheries Division may issue a further notice to:

- revoke the original notice
- extend a time period for compliance
- vary an existing notice
- advise of the period to pay a sum of money under an FMP or VMP.

### **3.12 Variation, suspension, revocation notices**

Marine and Fisheries Division may issue notices to revoke, suspend or vary a marine licence in specific, limited circumstances which include instances of non-compliance. The circumstances are:

- if any provisions in a licence have been breached;
- where misleading or false information or the failure to provide information has led to the issue of a licence, or if the correct information had been supplied the licence would have been refused or granted under different terms by the licensing authority;
- in cases relating to harm to the environment or human health, navigational safety or any other relevant reasons.

A suspension is for a length of time specified by Marine and Fisheries Division in the notice of suspension. Marine and Fisheries Division can issue a further notice extending the period of a suspension. However, a marine licence may not be suspended for a period exceeding 18 months.

### **3.13 Completion of actions**

If Marine and Fisheries Division is satisfied after any statutory notice has been served that the person has taken the necessary steps set out in the notice then, as best practice, it may confirm this in writing to the person or set out any further action Marine and Fisheries Division will be taking in cases of non-compliance with a statutory notice.





## **4.0 Monetary penalties**

This section provides detail on fixed and variable monetary penalties (referred to in the Act and secondary legislation as 'civil sanctions'), the circumstances in which each will be used, and the process for using them.

The statutory notices described in Section 3 are designed to stop harmful activities, and in some cases to order remedial or restorative works to be carried out as a result of harm caused. However, they do not allow a financial penalty to be applied to address the non-compliance, act as a future deterrent, or offset costs which may have been avoided by the operator in not complying with a licence or the licensing system.

There may also be minor offences which do not have direct environmental impact but have an impact on the ability of Marine and Fisheries Division to appropriately assess whether the operator is acting in accordance with their licence and the attached conditions. These minor offences may be administrative and may not be knowingly or recklessly committed or direct cause harm. However, they may still require resources from Marine and Fisheries Division to bring the individual back into compliance.

Fixed monetary penalties (FMPs) will be used where appropriate in response to low level, primarily technical offences which occur under a marine licence. Variable monetary penalties (VMPs) will be available for more serious breaches of licence conditions, where it is not proportionate to prosecute. VMPs may also be used to remove financial benefit resulting from the offence or to apply an additional deterrent. Both are covered in more detail in the following paragraphs.

### **4.1 General factors for applying monetary penalties**

The following is a list of general factors that Marine and Fisheries Division will consider when deciding whether to apply a fixed or variable monetary penalty. More detail is provided in the subsequent paragraphs and summaries are provided in Tables 3 and 4, overleaf.

### **4.2 Fixed monetary penalties**

An FMP is a relatively low level fixed penalty which Marine and Fisheries Division may impose for a specified minor offence.

**Table 3. Fixed Monetary Penalties (FMP)**

<b>Factors relating to:</b>	<b>Factor tending to suggest that an FMP is appropriate</b>
Offence	<ul style="list-style-type: none"> <li>operating under a licence</li> <li>offence is technical or administrative</li> </ul>
Offender	<ul style="list-style-type: none"> <li>has committed an offence unintentionally or without recklessness or negligence</li> <li>has failed to comply with advice and guidance</li> <li>does not have a history of non-compliance</li> </ul>
Impact	<ul style="list-style-type: none"> <li>no direct environmental impact or risk of impact, including impact on local community</li> <li>has impacted/is impacting on the ability of the Marine and Fisheries Division to inspect or monitor the works or activity</li> </ul>
Possible wider consequences	<ul style="list-style-type: none"> <li>it is not proportionate or in the public's interest to prosecute</li> </ul>

**Table 4. Variable Monetary Penalties (VMP)**

<b>Factors relating to:</b>	<b>Factor tending to suggest that a VMP is appropriate</b>
Offence	<ul style="list-style-type: none"> <li>operating with or without a licence</li> <li>a technical or administrative offence which has been committed repeatedly by the same operator</li> </ul>
Offender	<ul style="list-style-type: none"> <li>has intentionally provided false or misleading information or failed to disclose information;</li> <li>a person has undertaken an illegal activity</li> <li>has repeatedly ignored guidance or is known to have committed previous licensing offences</li> </ul>
Impact	<ul style="list-style-type: none"> <li>is causing/likely to cause harm to the environment or human health or interference with other legitimate uses of the sea</li> <li>impact on compliant business, competitors undermined</li> <li>has seriously impacted/is seriously impacting on the ability of the Marine and Fisheries Division to inspect or monitor the works or activity</li> </ul>
Possible wider consequences	<ul style="list-style-type: none"> <li>it may not be proportionate or in the public's interest to prosecute</li> <li>significant potential long-term effect</li> <li>potential impact on the wider population</li> </ul>

### **4.3 When is an FMP appropriate?**

FMPs will be available where a person breaches the requirement for a licence, or fails to comply with the conditions of a licence under Section 85 of the Act. Before Marine and Fisheries Division decides to impose an FMP, it must be satisfied beyond reasonable doubt that a person has committed the offence.

FMPs are appropriate for relatively minor offences where, for example, there is a failure to meet requirements to monitor or document activities. In these circumstances the Marine and Fisheries Division will wish to signal the need for compliance in a proportionate way.

FMPs are mainly appropriate where advice and guidance has already been given and has not been complied with. It is anticipated that Marine and Fisheries Division will use FMPs sparingly as advice and guidance will often be enough to ensure that a person returns to compliance.

FMPs are not appropriate for more serious cases of non-compliance, for example, where the impact of non-compliance is significant or where there is evidence of intent, or repeated non-compliance. A notice of intent for an FMP (see below) cannot be imposed where a variable monetary penalty or stop notice has been imposed for the same instance of non-compliance.

### **4.4 Process for using Fixed Monetary Penalties**

Where Marine and Fisheries Division has made a decision to impose an FMP, it must set out its intentions in a notice of intent to be sent to the person who has committed the offence.

The notice of intent must include the following specific information:

- the grounds for the proposal to impose the fixed monetary penalty;
- the amount of the proposed fixed monetary penalty;
- the effect of payment of the sum;
- the right to make representations and objections;
- the circumstances in which the Marine and Fisheries Division may not impose the fixed monetary penalty;
- the period within which liability to the fixed monetary penalty may be discharged, which will be 28 days;
- the period within which representations and objections may be made, which will be 28 days.

Someone who has been served a notice of intent for an FMP will be able to either:

- a) discharge their liability for the offence by paying a sum of money to the Marine and Fisheries Division. In the event that an operator decides to discharge their liability the proposed penalty level will be reduced by half

for a discharge payment made within 28 days beginning on the day the notice is received;

b) make written representations to Marine and Fisheries Division against issue of the final monetary penalty, within 28 days beginning on the day the notice is received. A senior officer within Marine and Fisheries Division will review the case including any new information and make a decision on whether or not to impose the final notice.

After the 28 day period has elapsed, where a person has not discharged their liability, Marine and Fisheries Division will decide whether or not to impose the final FMP notice, taking into account any written representations which have been made. For example, during the 28 day window, the recipient of a notice may provide new information, or new information may come to light which means Marine and Fisheries Division does not wish to impose (or have a case for imposing) the FMP.

Where Marine and Fisheries Division decides to impose the FMP, it will issue a final notice which will include the following information:

- 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) the early payment discounts or late payment penalties;
- f) rights of appeal; and
- g) the consequences of non-payment.

The level of FMPs is:

- £100 for individuals
- £300 for all other persons, including for example limited companies

Note that, if the maximum limit for an FMP is to be reviewed in the future, it will not exceed £5,000 in the medium term.

The level of FMP will be varied as follows:

- reduced by half for a discharge payment made within 28 days beginning with the day the FMP notice is received;
- reduced by half for payment within 28 days of the FMP being confirmed by Marine and Fisheries Division but only where the person has previously made representations;
- increased by half for payment more than 56 days after an FMP has been confirmed by Marine and Fisheries Division (“late payment penalty”).

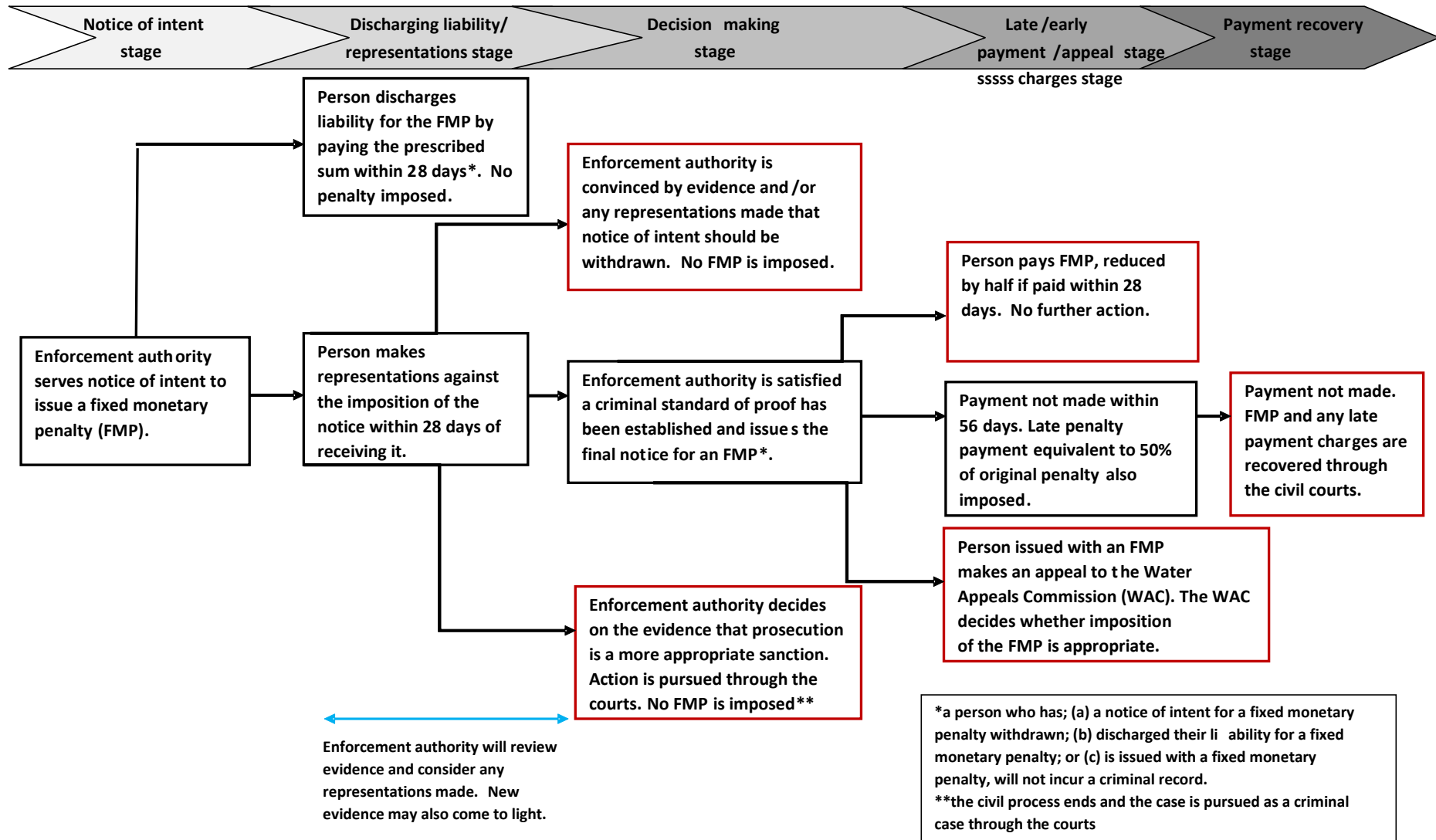
Any person in receipt of a final notice for an FMP has the right to appeal to the Water Appeals Commission against that notice (**see Section 5**). Where no appeal is brought against the decision to impose a fixed monetary penalty, the

penalty must be paid within the period of 56 days beginning with the day on which the final notice is received.

Where an appeal is brought but an FMP remains payable following that appeal, the penalty must be paid within the period of 28 days beginning with the day the appeal was determined.

If a payment remains outstanding, Marine and Fisheries Division may decide to initiate procedures to recover the payment. Marine and Fisheries Division will set out its policy on recovering unpaid penalties in published guidance.

**Figure 1** the process for applying FMPs.  
**Fixed Monetary Penalty process**



#### **4.5 Process for using VMPs**

Where the Marine and Fisheries Division has made a decision to impose a VMP, it must set out its intentions in a notice of intent to be sent to the person who has committed the offence. A notice of intent for a VMP will contain the following information:

- a) the grounds for the proposal to impose the penalty;
- b) the amount of the proposed penalty;
- c) the circumstances in which the Marine and Fisheries Division may not impose the penalty; and
- d) the period within which representations and objections may be made.

Once in receipt of a notice of intent a person may, within 28 days beginning on the day the notice is received, either:

- a) make representations against the imposition of the final penalty; or
- b) offer an undertaking as to action to be taken by the person (including the payment of a sum of money) to benefit any person affected by the offence.

The ability for a person to offer an undertaking enables an operator to provide some reparation to those directly affected by the offence. This could be in the form of a sum of money, or another action, such as putting up a sign warning others of the presence of a marine feature. However, Marine and Fisheries Division has the right to either accept or reject an undertaking. For more complex reparations, it may be more appropriate for Marine and Fisheries Division to agree with the operator that a remediation notice be issued setting out the agreed actions and the time within which the undertaking should be completed.

The recipient of a notice of intent for a VMP cannot discharge their liability before the final VMP is imposed, unlike in the case of FMPs.

After 28 days from the date the notice of intent for which a VMP is served, Marine and Fisheries Division will decide whether or not to impose the final VMP and whether to accept any undertakings offered by the operator, taking into account any written representations which have been made and reviewing the amount of penalty it proposes to impose. During the 28 days, the recipient of a notice may provide new information, or new information may come to light which means Marine and Fisheries Division does not wish to impose (or have a case for imposing) the VMP in relation to the offence.

The final notice for a VMP issued by Marine and Fisheries Division must contain the following information:

- 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.

Before issuing a final notice for a VMP Marine and Fisheries Division must also consider any undertaking it has accepted from the recipient.

#### **4.6 When is a VMP appropriate?**

VMPs are used:

- a) to remove any financial benefit that may occur from non-compliance;
- b) as a sanction against offending behaviour; and
- c) to adequately deter future non-compliance.

They are for use in cases where any other costs to the person of co-operating with enforcement action for the offence (such as the costs of complying with remediation notices along with any ancillary costs) do not already achieve these two objectives. Compliance with the law, restoration from harm, and compensation to affected parties therefore takes priority over monetary penalties.

VMPs are also available for information offences. In most cases an information offence – where a person intentionally or recklessly provides false or misleading information or fails to disclose information – is a serious offence and is dealt with through prosecution. However, Marine and Fisheries Division may assess that a person committing an information offence did so unintentionally. An example of this may be where someone perhaps filled in a form on the instruction of a supervisor and did not commit the offence deliberately. There may also have been mitigating factors for the act of non-compliance. In these circumstances Marine and Fisheries Division can choose to impose a VMP as a more proportionate sanction.

Where a VMP is imposed on a person, then that person cannot (at any time) be convicted of the offence to which the penalty was imposed or in relation to the instance of non-compliance giving rise to the penalty. Marine and Fisheries Division may not also issue a compliance notice to that person in respect of the act or omission giving rise to the penalty.

#### **4.7 How should the level of VMP be determined?**

There are three steps to working out the penalty. This section introduces these steps and how they are to be worked out. The steps are:

- i. Marine and Fisheries Division **estimates the financial benefit from non-compliance.**

This is, as a first step, to remove any financial benefit (in terms normally of costs avoided) associated with the specific case.

**ii. Add an appropriate deterrent component.**

Removing the financial benefit associated with the specific case of non-compliance, and requiring compliance and remediation where appropriate, will often not be sufficient to deter offending. This is largely because non-compliance is not always detected and enforcement action not always taken. Operators who do not comply may have, as a result, benefitted financially from that non-compliance. It is not feasible to base this component on probability of detection directly. There are, however, factors which help to indicate the effort a person has invested to prevent the non-compliance and what action has been taken to address non-compliance where it does happen. These factors will be taken into account in determining the deterrent component.

**iii. Deduct any other costs incurred.**

The purpose of a VMP is to ensure that a person faces sufficient costs to achieve the two objectives of i) removing financial benefit from the non-compliance, and ii) deterring non-compliance. In cases where persons have already incurred some costs in response to enforcement action the VMP would increase the costs to the level sufficient to achieve i) and ii). This is done by deducting the costs already incurred (as detailed in paragraph 4.43) from i) + ii). Where costs already equal or exceed i) + ii) a VMP should not be applied.

**i. Estimating the financial benefit from non-compliance**

The financial benefit will normally be the costs of any actions that can reasonably be considered necessary to have avoided the non-compliance. This would include, for example:

- the costs of any fees not incurred;
- the costs of any investments considered to have been necessary to avoid non-compliance (Please note that the actual costs of achieving compliance as a result of enforcement will be taken into account in calculating the deduction to be made at 4.29 above); and
- the costs of staff resource, expert or commercial services considered necessary to carry out the activity in a compliant manner.

The estimation of financial benefit should also include a reasonable amount to reflect the rate of return on sums that have not been expended and periods of time over which the benefit has persisted. In some cases the likely financial benefit will be expected to be small and it may not be proportionate for the Marine and Fisheries Division to investigate this.

## ii. Add an appropriate deterrent component

The deterrent component is a sum additional to the amount required to remove financial benefit. It is derived by taking a figure as a starting point and applying a multiplier to it, on the basis of the presence or absence of particular factors.

The starting sum can be:

- **Remediation costs.** Estimate of the costs of restoration required under a remediation notice; (A “remediation notice” is any notice the licensing authority can use to require restoration) or
- **The financial benefit.** Estimate identified in paragraph 4.30 where it considers this is significant; or
- **The maximum criminal fine a magistrate’s court could impose** for the specific offence where Marine and Fisheries Division cannot identify or make a sufficiently accurate estimate of either significant remediation costs or significant financial benefit; or Marine and Fisheries Division does not consider that these would be an appropriate starting point for reasons to be stated in the notice of intent.

Marine and Fisheries Division will choose the starting sum depending upon which one characterises the offence and may choose the one with the highest value.

Where remediation costs are chosen as the starting sum for the deterrent element the Marine and Fisheries Division must adjust the remediation cost downwards when that is necessary to ensure the starting sum is proportionate to the seriousness of the offence.

In order to make the deterrent proportionate to the non-compliance the Marine and Fisheries Division will apply an adjustment based on aggravating and mitigating factors.

First, a maximum multiplier that can be applied is determined on the basis of aggravating factors that indicate what effort the person has invested in avoiding the non-compliance or its effects. The Marine and Fisheries Division will consider the following factors. Note that the Marine and Fisheries Division will consider prosecution where more serious degrees of unacceptable behaviour are present.

- degree of blameworthiness;
- history of non-compliance;
- attitude to the non-compliance, for example lack of prompt action to eliminate or reduce the risk of damage resulting from regulatory non-compliance;

- foreseeability and risk of environmental harm (the risk may be much greater than would be suggested by the harm actually caused);
- ignoring earlier advice and guidance.

The maximum multiplier cannot exceed four times the starting sum.

Marine and Fisheries Division will assess each aggravating factor against a sliding scale from 0 to 4. Marine and Fisheries Division will then add the multipliers identified for each of the aggravating factors together and apply the total multiplier to the starting sum. The Marine and Fisheries Division will consult on its approach to assessing and applying each aggravating factor.

The example on page 31 illustrates how a VMP might be calculated.

The Marine and Fisheries Division will then assess mitigating features and reduce the deterrent component by reference to its assessment of the following factors:

- preventative measures taken in advance of the offence
- co-operation with the Marine and Fisheries Division
- voluntary reporting of regulatory non compliance
- remediation undertaken
- attitude to offence; and a prompt response
- personal circumstances (e.g. age, health issues)
- other case-specific mitigating features

It is anticipated that the maximum reduction will normally be up to 80% but might be up to 100% in exceptional circumstances.

### iii. Deduct any other costs incurred

The Marine and Fisheries Division will estimate the costs the person has incurred as a result of the offence and will include:

- ***The costs of complying with a statutory notice.*** This is the cost of any actions to comply with a relevant statutory notice (for example, a remediation notice). The costs could include, for example, the costs of actual remediation works carried out, any administrative costs and the costs of monitoring. Persons should be encouraged to provide evidence of costs. Where they do not, Marine and Fisheries Division should use judgment on the basis of the evidence available. This may include obtaining estimates from relevant contractors.
- **The costs recovered through an enforcement cost recovery notice.** This is any legal, expert, or administrative costs incurred by Marine and Fisheries Division up to the point at which the final VMP is imposed (see paragraph 4.60).

- **An amount to reflect any other costs resulting from the offence the Marine and Fisheries Division considers are justified.** This might include, for example, the costs of any actions taken voluntarily in response to the offence. Persons will generally have to provide documentary evidence of costs.

Where the total costs in this paragraph equal or exceed the sum of the financial benefit and the deterrent element then no VMP is served. Where the total costs are such that no monetary penalty would be imposed, it may be necessary in some circumstances for Marine and Fisheries Division to impose a VMP of a token amount (e.g. £1) to allow the final VMP to be calculated and the deducted enforcement costs to be recovered from the offender by means of a separate enforcement cost recovery notice. However, the costs that may be deducted would not include the cost of any works done that were of such an unsatisfactory standard that they have to be replaced rather than modified to achieve compliance.

#### **4.8 Right to require information**

Inspection and investigation provisions under Part 8 of the Act contain powers for Marine Enforcement Officers to search, seize and request documents etc as part of investigating a suspected offence.

#### **4.9 Uncertainty**

While Marine and Fisheries Division will follow the steps outlined above it should be emphasised that there will often be uncertainty in establishing the elements of a VMP precisely and ultimately Marine and Fisheries Division will need to exercise their reasonable judgment on the appropriate level of penalty on the basis of the evidence available to them. The effort that Marine and Fisheries Division invests in assessing the level of a VMP should be proportionate to the circumstances.

#### **4.10 Maximum level for VMPs**

There is no statutory maximum level for a VMP. However, Marine and Fisheries Division may, as stated above, take into account the maximum penalty which could otherwise be awarded by a Magistrate's court if the offence were heard through the criminal system when calculating the level of the VMP. The maximum level of fine that a Magistrate's court could award is set in the Act and is £50,000 for most licensing offences or £5,000 (the statutory maximum).

#### **4.11 Multiple offences**

In some cases it may be proportionate to impose VMPs for more than one offence. More than one VMP may be proportionate if more than one offence needs to be addressed to properly capture the relevant facts of the case. Where more than one VMP is used, Marine and Fisheries Division will ensure that the overall penalty remains proportionate to the facts and the overall level of deterrence is appropriate.

#### **4.12 Ability to pay**

There may be some cases where a person is unable to pay the full amount of a penalty. In these circumstances, the person will need to make a submission to

Marine and Fisheries Division with evidence of limited ability to pay for the Marine and Fisheries Division to take into account.

#### **4.13 Process for using VMPs**

Where the Marine and Fisheries Division has made a decision to impose a VMP, it must set out its intentions in a notice of intent to be sent to the person who has committed the offence. A notice of intent for a VMP will contain the following information:

- a) the grounds for the proposal to impose the penalty;
- b) the amount of the proposed penalty;
- c) the circumstances in which the Marine and Fisheries Division may not impose the penalty; and
- d) the period within which representations and objections may be made.

Once in receipt of a notice of intent a person may, within 28 days beginning on the day the notice is received, either:

- a) make representations against the imposition of the final penalty; or
- b) offer an undertaking as to action to be taken by the person (including the payment of a sum of money) to benefit any person affected by the offence.

The ability for a person to offer an undertaking enables an operator to provide some reparation to those directly affected by the offence. This could be in the form of a sum of money, or another action, such as putting up a sign warning others of the presence of a marine feature. However, Marine and Fisheries Division has the right to either accept or reject an undertaking. For more complex reparations, it may be more appropriate for Marine and Fisheries Division to agree with the operator that a remediation notice be issued setting out the agreed actions and the time within which the undertaking should be completed.

**Example to illustrate calculation of VMP – Carrying out a licensable activity without a licence.** (Note: Marine licence costs are illustrative and do not reflect charges.)

#### **Background**

An individual decided to build a home on a private beach and obtained all of the correct terrestrial consents. As part of the development, large quantities of rock armour were temporarily stored on the shore below Mean High Water Spring. A marine licence was not sought because the applicant was misadvised by an architect. Marine and Fisheries Division decides to serve a VMP and works out the penalty as follows:

- i) **Estimate financial benefit from non-compliance.** Marine and Fisheries Division identifies the measures it considers were necessary to have avoided non-compliance. Once aware of the offence, the applicant was keen to submit the correct marine

applications but this is not permitted retrospectively. The only financial benefit was £715 – the cost avoided from not having obtained the correct marine licence. The applicant must be charged this to correct the non-compliant behaviour avoiding a £715.00 licence fee.

**ii) Add an appropriate deterrent component.** Marine and Fisheries Division uses the estimated financial benefit as the starting sum for calculating the deterrent component.

Assess the Aggravating Factors (figures are illustrations only):

- Degree of blameworthiness = 0 - the person was legally obliged to apply for a licence and did not. Ignorance is not an acceptable defence but the person did demonstrate willingness to cooperate with authorities.
- History of non-compliance = 0 – there has been no enforcement action in relation to similar non-compliance.
- Attitude to the non-compliance = 0 – once the individual was aware an offence had been committed and that a licence for the works should have been obtained, they asked to purchase one to demonstrate their compliance. This was not possible as retrospective licensing is not permitted.
- Foreseeability and risk of environmental harm = 0 – based on the scientific evidence, no harm has occurred as a result of the unlicensed activity.
- Ignoring earlier advice and guidance = 0 - the individual sought advice on licensing applications from their local council and obtained all the documents they were advised to obtain.

Aggravating factors = 0

**Therefore there is no multiplier to apply to the starting sum, which remains at £715.00**

The next step would be to apply the relevant mitigating factors to reduce this maximum amount.

Mitigating factors include:

(1) Preventative Measures: 10%. - it was not possible for the individual to take prevention measures as they were unaware of the licensing process. However, they sought and followed guidance from the architect in good faith. If an application had been received by the applicant, it would have been granted based on the methodology used.

(2) Cooperation with Marine and Fisheries Division: 20% - prompt and full cooperation in the investigation. No remediation necessary.

(3) Self-Reporting: 0% - the individual did not report this. They were unaware an offence had been committed.

(4) Restoration and Remediation: 10% - the deposit was of a temporary nature and no environmental damage was caused. There was no opportunity or necessity to restore or remediate beyond removing the rock armour from the shore. Given the individual's attitude to the offence, Marine and Fisheries Division is confident that if damage had occurred the individual would have taken voluntary measures to rectify the situation.

(5) Attitude to Offence: 20% - the applicant was fully co operative and made every effort to comply with requests once they were made aware of the legislation. Under the circumstances there was nothing further that could have been done.

(6) Personal Circumstances: Not relevant.

(7) Case Specific Factors: 20% - the individual made an effort to employ a specialist marine contractor and had faith in their expertise. They have been fully cooperative and Marine and Fisheries Division is satisfied with their methodology and believe that they would have obtained a licence had they been so advised.

The £715.00 is reduced by 80% to £143.00.

This deterrent component is added to the financial benefit producing a figure of £858.00.

*iii) Deduct any other costs incurred.* The licensing authority assesses that no additional costs have been incurred by the person

**Total VMP issued = £858**

The recipient of a notice of intent for a VMP cannot discharge their liability before the final VMP is imposed, unlike in the case of FMPs.

After 28 days from the date the notice of intent for which a VMP is served, Marine and Fisheries Division will decide whether or not to impose the final VMP and



whether to accept any undertakings offered by the operator, taking into account any written representations which have been made and reviewing the amount of penalty it proposes to impose. During the 28 days, the recipient of a notice may provide new information, or new information may come to light which means Marine and Fisheries Division does not wish to impose (or have a case for imposing) the VMP in relation to the offence.

The final notice for a VMP issued by Marine and Fisheries Division must contain the following information:

- 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.

Before issuing a final notice for a VMP Marine and Fisheries Division must also consider any undertaking it has accepted from the recipient.

#### **4.14 Payment of VMP**

Any person in receipt of a final notice for a VMP has the right to appeal to the WAC against that notice (**see Section 5**). Where no appeal is brought against the decision to impose a VMP, the penalty must be paid within the period of 56 days beginning with the day on which the final notice is received, or a later period agreed with Marine and Fisheries Division in writing.

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

If a VMP remains unpaid, Marine and Fisheries Division will be able to recover the penalty amount (plus any other costs) through a civil debt procedure or under a court order as with an FMP. This recovery process allows for any interest charges to be applied as appropriate.

#### **4.15 Recovery of costs associated with the imposition of a VMP**

Any person on whom a VMP is imposed may be required to pay reasonable costs incurred by Marine and Fisheries Division in relation to the imposition of the penalty up to the time of its imposition – in particular, investigation costs, administration costs and the costs of obtaining expert advice (including legal advice). However, the type of cost is not limited to these three areas. Other reasonable costs may also apply, for example, Marine and Fisheries Division may have to pay for storage of items (e.g. dredging equipment) seized during the course of an investigation.

In any case where a cost recovery notice is served:

- the notice must specify the amount required to be paid;
- Marine and Fisheries Division may be required to provide a detailed breakdown of that amount;
- the person required to pay costs is not liable to pay any costs shown by the person to have been unnecessarily incurred.

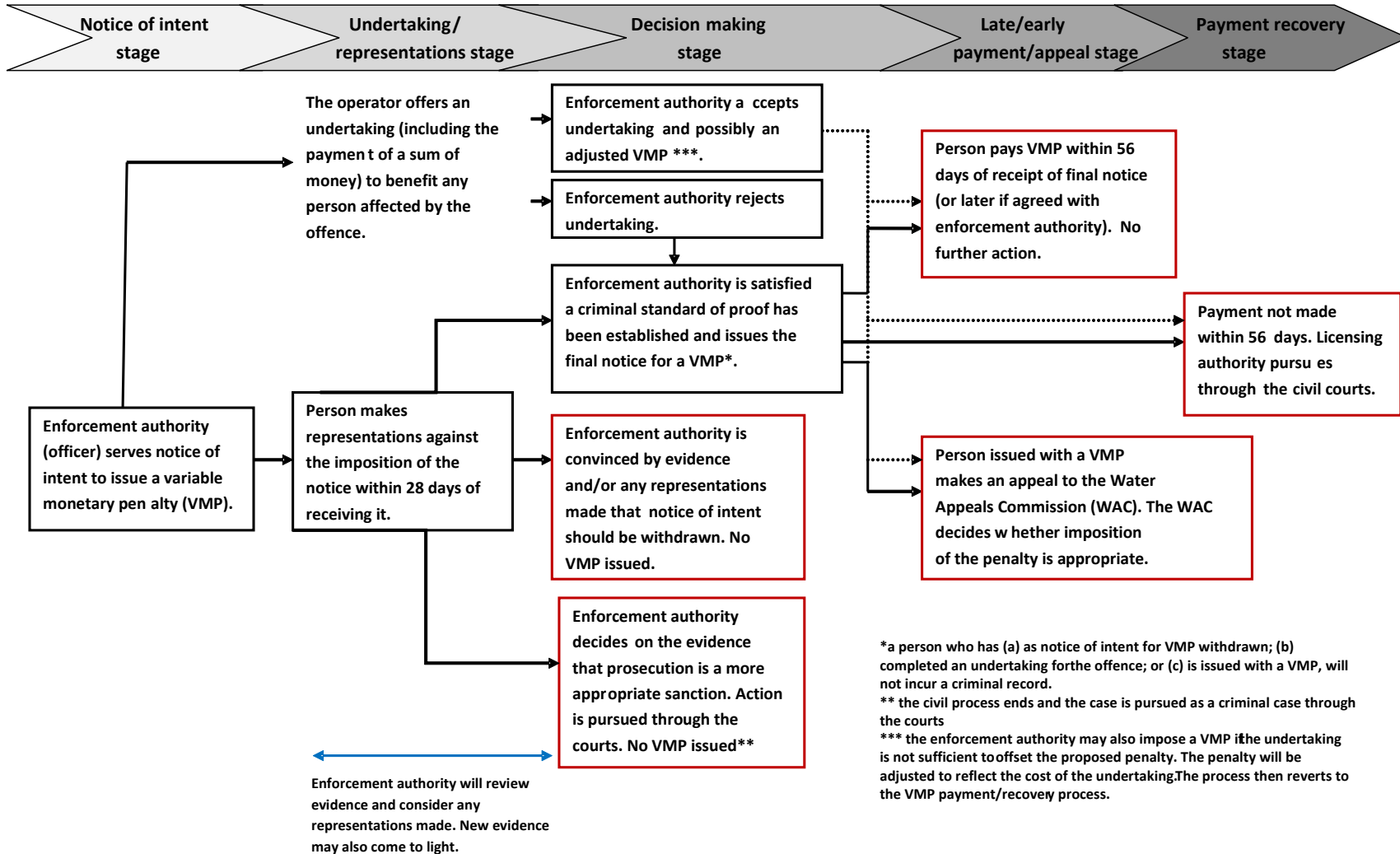
The person required to pay costs may appeal against:

- the decision of Marine and Fisheries Division to impose the requirement to pay costs;
- the decision of Marine and Fisheries Division as to the amount of those costs.

Detail on the procedure for appeals is set out in **Section 5**.

**Figure 2** below outlines the process for applying VMPs.

**Figure 2 Variable Monetary Penalty process**



## **4.16 Monetary penalties – general provisions**

### **Payment route for penalties**

Any money Marine and Fisheries Division receives from an FMP or a VMP (that is, any discharge payment, any interest or other financial penalty for late payment) will be paid into HM Treasury's consolidated fund. This provides an assurance that Marine and Fisheries Division will not use monetary penalties to raise revenue for its own purposes.

### **4.17 Ability to withdraw a final notice**

Marine and Fisheries Division will be able to amend or withdraw a final notice for a monetary penalty in limited circumstances, for example, in order to correct an error, or to reduce the amount payable in the case of a VMP. It will not be able to increase the amount payable.

### **4.18 Serving Notices**

Any notice served to a person must be served using one of a selection of methods, which are:

- a) personal delivery;
- b) addressing it to the person and leaving it at the appropriate address;
- c) addressing it to the person and sending it to that address by post;
- d) in a case where an address for service using electronic communications has been given by the person, sending it using electronic communications.

### **4.19 Right of appeal**

Any person who has been served with a final notice for a monetary penalty will have a right to appeal against its imposition. A person can also appeal against a requirement to pay to Marine and Fisheries Division costs incurred by it in the period up to the imposition of a VMP (an Enforcement Cost Recovery Notice). The procedure for appeals is set out in **Section 5**.

## **5.0 Appeals against statutory notices, monetary penalties and enforcement cost recovery**

This section provides information on the appeal process.

To ensure that the enforcement tools are used fairly and that the Marine and Fisheries Division is accountable for its decisions, there are statutory rights of appeal to the Water Appeals Commission (WAC), an independent tribunal body. The WAC's contact details are as follows:-

Water Appeals Commission  
Park House  
87-91 Great Victoria Street  
BELFAST  
BT2 7AG  
Telephone number: (028) 9024-4710  
Fax number: (028) 9031-1338  
e-mail: [info@pacni.gov.uk](mailto:info@pacni.gov.uk)  
website: [www.pacni.gov.uk](http://www.pacni.gov.uk)

Information on WAC appeal procedures can be downloaded from the Publications page of its website.

### **5.1 Rights of appeal**

The following people have the right of appeal:-

- a person who has been issued with a notice varying, suspending or revoking a marine licence or extending the period of suspension;
- a person who has been issued with an enforcement notice (that is to say, a compliance notice, a remediation notice, a stop notice or an emergency safety notice);
- a person whom a fixed or variable monetary penalty has been imposed;
- a person required to pay costs incurred by Marine and Fisheries Division as enforcement authority.

In all cases, the appellant and Marine and Fisheries Division has the right to an oral hearing if either so wishes.

### **5.2 Appeals against statutory notices**

- Appeals against notices varying, suspending or revoking a marine licence or extending the period of suspension and against enforcement notices must be received by the WAC within 28 days from the day the notice was issued. The WAC has no power to extend this period. Grounds of appeal must be specified.

A compliance notice is automatically suspended pending determination of an appeal. Marine and Fisheries Division may suspend a remediation notice, a stop notice or an emergency safety notice pending determination of an appeal.

In dealing with an appeal against a statutory notice, the WAC has the power to quash the notice, vary its terms or uphold the notice. It may also take such steps as Marine and Fisheries Division could take in relation to the act or omission giving rise to the notice.

### **5.3 Appeals against monetary penalties and enforcement cost recovery notices**

An appeal against a monetary penalty may be brought on any of the following grounds:-

- a. that the decision was based on an error of fact;
- b. that the decision was wrong in law;
- c. in the case of a variable penalty, that the amount of penalty is unreasonable;
- d. that the decision was unreasonable for any other reason;
- e. any other reason permitted by the WAC.

In appealing against an enforcement cost recovery notice, the appellant may challenge the decision to impose the requirement to pay costs and/or the amount of those costs.

A monetary penalty or an enforcement cost recovery notice is automatically suspended pending determination of an appeal. The burden of proof is on Marine and Fisheries Division and any allegation that an offence has been committed must be proved beyond reasonable doubt. The WAC may quash or confirm a fixed monetary penalty. It may quash, confirm or vary a variable monetary penalty or an enforcement cost recovery notice.

## 6.0 Permitted combinations of enforcement action

This section explains which enforcement actions may and may not be applied together.

The Act places restrictions on the combinations of enforcement tools that may be used in relation to the commission of an offence.

- Where a person has been served with a notice of intent for an FMP, Marine and Fisheries Division cannot bring criminal proceedings against that person for the offence before the end of the 28 day period in which that person can discharge liability. If the person chooses to discharge liability, at no time can they be convicted of the offence.
- Where a person has been issued with an FMP, Marine and Fisheries Division cannot bring criminal proceedings against that person for the offence in question, or impose a compliance or remediation notice.
- Where a person has been issued with an FMP, or a person has discharged liability for an FMP within the 28 day period, Marine and Fisheries Division cannot issue a notice of intent for a VMP against that person for the same offence.
- Where a person has been issued with a VMP, Marine and Fisheries Division cannot issue a notice of intent for an FMP on that person for the same offence.
- Where a person has been issued with a VMP, Marine and Fisheries Division cannot bring criminal proceedings against that person for the offence in question, or impose a compliance notice for that offence.

Marine and Fisheries Division as an enforcement authority may only combine enforcement actions for the same offence in certain ways. In addition to the combinations prohibited above, it may not take the following action in relation to the same offence:

- a) impose a fixed monetary penalty where a variable monetary penalty has been imposed;
- b) impose a variable monetary penalty where a fixed monetary penalty has been imposed;
- c) impose a variable monetary penalty or stop notice where the person has discharged liability for a fixed monetary penalty;
- d) impose a fixed monetary penalty where a stop notice has been issued;
- e) issue a stop notice where a fixed monetary penalty has been imposed or a person has discharged liability to an FMP.

All other permutations are permitted and would be decided based on Marine and Fisheries Division's assessment of the degree of harm caused, for example, a remediation notice and a VMP, a remediation notice and a stop notice, a stop notice, emergency safety notice and a VMP.

There is also potential for VMPs to be used to address minor repeated offences, although prosecution may still be the most appropriate sanction in the majority of cases.

## **7.0 Publication of enforcement action**

This section explains what Marine and Fisheries Division is required to do in relation to publication of the enforcement action it has taken.

### **7.1 Publication of enforcement action**

Public confidence in how the enforcement tools are used calls for transparency. The Macrory report emphasised the importance of transparency as a characteristic of good enforcement. Transparency will be important not only in the way Marine and Fisheries Division determines enforcement action, and in appeals to the WAC, but also in ready public access to information about any enforcement action that has been taken.

Marine and Fisheries Division will therefore publish occasional reports providing information on cases where:

- a) monetary penalties have been imposed,
- b) the penalty has been discharged (in the case of FMPs), and
- c) it has accepted an undertaking (in the case of VMPs).

It is also a requirement for Marine and Fisheries Division to publish a register of any enforcement action it has taken. The register must contain:

- a) the licence number (where applicable);
- b) the name and address of the person against whom the enforcement action was taken;
- c) the type of enforcement action taken;
- d) the date of the offence or other activity in relation to which the enforcement action was taken;
- e) the reason for the enforcement action;
- f) details of any fixed monetary penalty or variable monetary penalty imposed, or any payment made to discharge a proposed fixed monetary penalty.



Marine and Fisheries Division considers it good practice as the enforcement authority to publish only general information on offences and enforcement action. Personal information will not be placed on the website.

The fact that an undertaking has been offered by a person and accepted may also be recorded. The register may also record where the person has fulfilled all the requirements satisfactorily in the time agreed.

Marine and Fisheries Division will not publish details where the enforcement action is being appealed, or has been overturned at appeal.

Marine and Fisheries Division may also pursue pro-active publicity options, such as issuing press releases. Whether an enforcement authority decides to do this will depend on the circumstances of the case taking account, for example, of local concern, any health risks posed by the case and the behaviour of the person. In many cases, it will be unnecessary to actively publicise an enforcement action. There may be other cases where it would be appropriate, for example, where the action taken relates to a case which has caused wide public concern or harm. It may also be in the interests of the person responding to a remediation notice or carrying out an undertaking that the remedial steps are widely known.

Marine and Fisheries Division considers that including the offence publicly on the register is the most important aspect of an FMP as a marker that a degree of improvement is needed; an FMP would be appropriate mainly where advice and guidance had failed to secure the necessary change. The entries of FMPs on the public register should specify where the penalty has been discharged by payment of the penalty following the notice of intent and without further action being taken. Given that in the graduated system of sanctions, FMPs are for the least serious cases, Marine and Fisheries Division would not normally take active steps (for example, case-specific press releases) to publicise them.

## **8.0 Factors determining enforcement approach**

This section provides guidance on how the new enforcement tools relate to existing mechanisms. It explains the use of advice and guidance. It then explains the way in which the Marine and Fisheries Division will typically approach decisions to prosecute at present and illustrates how it is likely to make decisions in the future with the wider range of tools. It also sets out how Marine and Fisheries Division will make decisions within the wider context of its enforcement policy.

### **8.1 Advice and guidance**

Advice and guidance will remain the cornerstone of a well graduated system of enforcement and will in many cases be sufficient to achieve the Marine and Fisheries Division's enforcement objectives.

Marine and Fisheries Division may use the new sanctions when it considers that advice and guidance alone will not achieve its enforcement objectives. FMPs, which are for the least serious cases, would mainly be appropriate where advice and guidance has failed to achieve the necessary improvement. Some potential scenarios of FMP and VMP use are given in Annex 1.

## **8.2 Prosecution**

In cases that cannot be adequately dealt with through the FMP/VMP/Statutory Notices route, Marine and Fisheries Division will then consider proceeding a case in line with its Enforcement Policy (Jan 2011). Prosecution is an important part of any enforcement system – acting as both punishment and a deterrent. Marine and Fisheries Division recognise that the initiation of a prosecution is a serious matter which should only be taken after appropriate consideration of the implications and consequences, one of which may be imprisonment. The choice of enforcement action taken will depend on the individual case and there may be circumstances where Marine and Fisheries Division might wish to prosecute without prior warning or recourse to other methods of enforcement.

As a regulator, it is the responsibility of Marine and Fisheries Division to investigate breaches of marine licensing legislation by gathering evidence and presenting this to the prosecutor. The decision to prosecute and to conduct the case on behalf of Marine and Fisheries Division is ultimately made by the Public Prosecution Service for Northern Ireland, (PPS). The PPS is wholly independent from both the investigating agency and government. Its decisions will be based on impartial and professional assessment of the available evidence and the public interest.

## **8.3 Circumstances likely to lead to prosecution**

When the use of FMP's, VMP's or Statutory Notices have failed and if Marine and Fisheries Division consider there is sufficient evidence, Marine and Fisheries Division will normally submit a case to the PPS, recommending criminal prosecution where one or more of the following has occurred:

- incidents or breaches that have significant consequences on the environment, natural and built; the protection of Northern Ireland's marine environment, human health and prevention of interference with legitimate uses of the sea is the primary objective of the Act and of Marine and Fisheries Division.
- someone knowingly carries out activities without a relevant licence or consent; it is vital to the protection of the environment that all those required to be regulated are correctly registered.
- someone fails to comply with formal remedial requirements, such as enforcement works or prohibition notices; Notices of this kind are issued to

protect Northern Ireland's marine environment from harm. Ignoring such notices undermines the regulatory system and is considered unacceptable.

- there are excessive or persistent breaches of regulatory requirements; where an operator has been notified of previous Violations, it is unacceptable that no corrective action is taken to rectify the problem.
- failure to report an incident that threatened or caused significant environmental damage; The concealment of an environmental incident may hamper Marine and Fisheries Division in effecting a timely response and mitigating potential damage.
- there is reckless disregard for management or quality standards; Irresponsible operators pose a significant risk to the marine environment, human health and responsible users of the sea. These operators must be brought in to compliance or prevented from operating.
- someone fails to supply information when legally required without reasonable excuse, or knowingly or recklessly supplies false or misleading information: Marine and Fisheries Division must be able to rely on the data produced by regulated industries in order to carry out its duties.
- Marine and Fisheries Division staff or authorised officers are obstructed in carrying out their duties: The obstruction or assault of Marine and Fisheries Division staff carrying out their duties is unacceptable.

#### **8.4 Evidential Test**

A prosecution will not be commenced or continued unless the PPS is satisfied that the Evidential Test for Prosecution is met. Public Prosecutors must determine whether there is sufficient, admissible and reasonable evidence that the offence has been committed and that there is a realistic prospect of conviction.

#### **8.5 Public Interest Test**

Once the PPS is satisfied that there is sufficient evidence to provide a reasonable prospect of conviction, it will then consider whether it is in the public interest to prosecute. The presumption is that, where there has been a contravention of criminal law, the public interest requires prosecution, although prosecutors must exercise their discretion. The following are examples of some public interest considerations for prosecution which may be relevant:

- the effect of the offence on the marine environment both natural and built;
- whether the offence was foreseeable or the circumstances leading to it;
- the intent of the offender, individually and /or corporately;
- whether financial benefit has been accrued from the proceeds of unlawful activity and/or
- the history of the offender.

#### **8.6 Responsible persons**

Should the PPS consider that the Evidential and the Public Interest Tests for Prosecution are met; criminal proceedings will be brought against those persons

responsible for the offence. Where a Company is involved, it will be usual practice to prosecute the Company where the offence resulted from the Company's activities. However, in some cases it may be necessary to consider any part played in the offence by the senior officers of the Company, including Directors, Managers and the Company Secretary. Action may also be taken against such officers (as well as the Company) where it can be shown that the offence was committed with their consent, knowledge or connivance, or was due to lack of reasonable diligence on their part.

### **8.7 Working with others**

Where appropriate, we will work with other enforcement agencies to co-ordinate regulation, investigation or prosecution. This will include working with other Marine and Fisheries Division teams, Planning Service and the Police Service of Northern Ireland. We will also work closely with our equivalent enforcement agencies in Great Britain and the Republic of Ireland.

### **8.8 Monitoring and Reviews**

Monitoring/review of the new enforcement tools will take place as described in Annex 2. This will be informed from feedback with the regulated community. It is intended to consult the regulated community for opinions after a full year in operation. In the intervening period the Department does have a general **complaints procedure which is available on the website at [www.ni-environment.gov.uk](http://www.ni-environment.gov.uk) or by phoning the Marine and Fisheries Division customer co-ordinator on 028 90569213.** Comments on regulatory activity can also be made through an online feedback facility on the Department of Enterprise, Trade and Industry (DETI) website, as part of the Northern Ireland Civil Service (NICS) commitment to deliver better regulation.

[www.detini.gov.uk/deti-better-regulation-index/better-regulation-newpage-8.htm](http://www.detini.gov.uk/deti-better-regulation-index/better-regulation-newpage-8.htm)

## **Annex 1: Scenarios to illustrate using statutory notices and monetary penalties**

Please refer to Section 8 of this guidance, which explains the way in which the Marine and Fisheries Division typically approaches decisions to prosecute at present and illustrates how it is likely to make decisions in the future with the expanded toolkit that will include civil sanctions.

### **Scenario 1 – FMP**

A final monitoring report should have been submitted to Marine and Fisheries Division six weeks after works have completed but this has not been provided by the operator. Marine and Fisheries Division sends a reminder to the licence holder with a deadline for a response but a return is not received.

This work is being done by a very large company but the offence is entirely administrative and not likely to affect areas considered by Marine and Fisheries Division to be harmful to the environment or human health or to interfere with legitimate uses of the sea. The delay in providing the required information may affect other decisions taken by Marine and Fisheries Division i.e. marine planning decisions on other activity in the area. Therefore an FMP would be appropriate.

### **Scenario 2 – Compliance Notice**

Piling activity is occurring on a quayside. The work is licensed and one of the conditions stipulate piling can only start two hours after low tide in order to prevent disturbance to migratory fish species. A Marine and Fisheries Division Officer who passes the works every day has noticed that piling seems to be starting closer and closer to low tide.

A Marine and Fisheries Division licensing officer visits the site and notes that piling is starting approximately 45 minutes after low tide, in breach of the condition. The licence holder says the lack of compliance is due to a new site manager who is not fully aware of the licence conditions.

From the inspection of the site, Marine and Fisheries Division concludes the activity is not causing and unlikely to cause serious harm to the environment or human health, or serious interference to other sea users. However, there is likely to be some risk of disturbance to migratory fish species and noise nuisance to residents living near the quayside. Marine and Fisheries Division issues a **Compliance Notice** to the licence holder:

- reminding them of the times that piling can occur, as per their licence conditions and reminding them that this condition is in effect for the duration of the licence;
- requiring that a form, stating that licence conditions are read and understood, must be signed and returned to Marine and Fisheries Division by any individual who has site responsibility before commencing work.

### **Scenario 3 – Remediation Notice**

Maintenance works on a pipeline have been ongoing off the Northern Ireland coast. Part of the works involves supporting the pipeline with metal piles. A marine licence issued for the works states that once work on the pipeline is completed the pipes must be removed. The construction company informs Marine and Fisheries Division that due to the nature of the substrate the piles have been driven into, it is proving impossible to get them out.

Efforts have been made by the company to remove the piles including hiring costly, specialist machinery. However attempts have been unsuccessful and there are concerns that more extreme methods may damage the pipeline.

The company has cut the piles down below beach level. However Marine and Fisheries Division does not feel they have been cut down enough and run the risk of becoming exposed. Marine and Fisheries Division considers that the exposed piles are likely to create a hazard for bathers who regularly use the stretch of beach. Having consulted the licence holder, Marine and Fisheries Division decides to issue a Remediation Notice:

- requiring that the depth of the piles must be cut to two metres below beach level within 24 hours. Marine and Fisheries Division also requires the licence holder to regularly inspect the piles for their lifetime and cut them down to a safe level should they become exposed at any time in the future.
- Stating the time in which the remediation work must be completed.

Since the piles cannot be removed without damaging the pipeline, Marine and Fisheries Division concludes that it would be unreasonable to require the company to restore the site to its original condition. The remediation notice therefore requires the licence holder to undertake beach improvements at a site further along the coast. Marine and Fisheries Division, in consultation with the licence holder, calculates that the cost of this work is equal to how much it would have cost to remove the piles if the original methodology had been followed. Time, labour and machinery are taken into account in this calculation.

#### **Scenario 4 – Stop Notice**

Following information provided by a member of the public, a licensing officer visits a site where it is suspected that material is being illegally dumped into the sea. On arrival the officer observes a small dumper truck tipping material from a small pier into the sea. The material appears to be a combination of mud, soil and landfill material.

There is no marine licence in place for this activity and the officer is concerned that the material is from a nearby construction site. The ground in the area is highly contaminated with heavy metals. There is also an ASSI close to the site which has suffered extreme damage along the coastal edge with evidence of soil and construction material on site. The officer, on consultation with the senior manager, issues a stop notice immediately having assessed that the activity is licensable and is causing serious harm to the environment and potentially to fish populations in the vicinity.

The Stop Notice states that:

all work must cease immediately as the contaminated soil could pose a threat to both the environment and human health.

Further investigation may lead to a remediation notice and/or a VMP or prosecution.

#### **Scenario 5 – Emergency Safety Notice**

A company is in the process of dismantling an old pier which has been damaged by a recent fire and is in a dangerous condition. The works are licensed, but upon inspection, a licensing officer discovers that the construction work has changed the position of the structure resulting in some of the material becoming partially submerged and in close proximity to a local water-sports club. The submerged structures are sharp and are a potential hazard to those using jet skis in the area.

In consultation with the Maritime & Coastguard Agency Marine and Fisheries Division issues an Emergency Safety Notice.

The Emergency Safety Notice requires:

that the licence holder immediately places marker buoys around the submerged material for the duration of the time that the material is submerged and is continuing to cause a navigational hazard;

that the submerged material must be removed within five working days but must be done outside the normal operating hours of the water-sports club.

### **Scenario 6 – Variation Notice for a marine licence**

Improvements are being made to a marina in poor condition. The company carrying out the works was not fully aware of the extent of the works when it originally applied for the relevant marine licences. Work is unexpectedly due to go on into the summer months and coastal officers have started receiving complaints from the local kayaking club that access to a nearby slipway is restricted due to construction vehicles and materials. Use of the slipway for this purpose was stated in the original application as it was not in use by the club over winter and the works were not expected to continue into the summer. In consultation with the construction company and the kayak club, Marine and Fisheries Division issues a variation notice.

The Variation Notice:

- amends one of the licence conditions to require that materials and vehicles may only be left on the slipway during 9am-2pm Monday to Friday but must be cleared to allow access for other sea users at all other times.

### **Scenario 7 – Suspension Notice**

Construction work is taking place offshore which involves transporting personnel to the offshore site using a hovercraft. The works are located close to an RSPB wetland area and, in order to prevent disturbance to nesting birds in January and February, the licence conditions limit the hovercraft use to twice a day and stipulate a specific route and speed the vessel must adhere to. At the beginning of January RSPB officers report observing the vessel travelling at high speed and erratically through the wetlands, causing obvious disturbance to the birds.

Marine and Fisheries Division decides initially to issue a Compliance Notice:

- requiring that the company adheres to the conditions in its marine licence for vessel use in the area;
- requiring that all vessel operators are adequately trained to operate the vessel.

The RSPB officer continues to monitor the situation and supply to Marine and Fisheries Division photographic and video evidence of the vessel and injuries and mortalities to nesting birds caused by the hovercraft.

On the evidence presented, Marine and Fisheries Division issues a Suspension Notice stating:

- the licence is to be suspended until the end of February. As a result construction work cannot proceed and the hovercraft cannot be used until the nesting birds have left.

Further investigation may result in a Variation notice, Revocation Notice, Remediation Notice and/or a VMP or a prosecution case



### **Scenario 8 – Revocation Notice for an existing notice**

A Compliance Notice is in place to prevent piling close to low tide for the duration of the works. Due to delays in carrying out the works the company has applied for, and received an extension to their original licence by two weeks. They have also requested that the compliance notice be lifted as it was only intended to apply to migratory species which are only present near the site at certain times of year. On consultation with the Marine and Fisheries Division, Natural Environment Division Marine and Fisheries Division issues a revocation notice.

The Revocation Notice:

revokes the original Compliance Notice which restricted piling at low water between November and April.

### **Scenario 9 – Revocation Notice for a marine licence**

A licence is issued for maintenance dredging in a marina. Specific coordinates were provided by the licensee in their original marine licence application showing the dredge areas. Using these coordinates Marine and Fisheries Division issued the marine licence on the basis that the sediment due to be dredged is inert and suitable for disposal at sea.

During a routine inspection licensing officers note that the dredger is dredging outside the coordinates stipulated in the licence. The area the material is actually dredged from would be classified as capital dredge and there is a high risk of contaminated sediments.

The licensing officer issues a Stop Notice immediately to stop further dredging and investigates the matter further. The company claims the co-ordinates submitted with the original marine licence application were submitted in error and they should have requested a licence to capital dredge. An application for a capital dredge would have cost significantly more and resulted in sediment being disposed on land because of the risk of contamination from disposing the dredged material.

When the Stop Notice comes to its end, Marine and Fisheries Division issues a Revocation Notice which states:

that the licence has been revoked and is no longer valid. Any further action taken under this licence is an offence.

Further investigation may result in a VMP or prosecution (for the offence of giving false or misleading information at the time of applying for a marine licence).

## Annex 2: Glossary

<b>Appeal</b>	The opportunity provided for the operator to challenge a decision made by the regulator by appealing to the Water Appeals Commission.
<b>Appellant</b>	Any person who lodges an appeal
<b>Civil sanction</b>	A fixed or variable monetary penalty imposed by the enforcement authority.
<b>Code for Crown Prosecutors or the Code</b>	A public document issued by the Director of Public Prosecutions that sets out the general principles that prosecutors should follow when they make decisions on cases.
<b>Compliance notice</b>	A written notice issued by the enforcement authority which requires a person to take actions to comply with the conditions of a licence, or to return to compliance within a specified period.
<b>Department of Agriculture, Environment and Rural Affairs - Northern Ireland (DAERA- NI)</b>	The Department in Northern Ireland with responsibility for Marine Licensing and Enforcement.
<b>Discharge payment</b>	Reduction of penalty for payments made within 28 days following a notice of intent for FMPs.
<b>Emergency Safety Notice</b>	A written notice which requires an operator to cease an activity that is causing serious interference with legitimate uses of the sea and make safe a serious navigational safety hazard.
<b>Enforcement</b>	Action taken in response to non-compliance.
<b>Enforcement Cost Recovery Notice (ECRN)</b>	An Enforcement Cost Recovery Notice is a written notice issued by the enforcement authority which requires a person to pay the enforcement authority's investigation, legal or administrative costs when these have been incurred in imposing a VMP.
<b>Final notice</b>	Notice served after the period for representations has ended.
<b>Financial benefit</b>	The costs of any actions that can reasonably be considered necessary to have avoided non-compliance and potential financial return on sums that have not been expended.
<b>Fixed Monetary Penalty (FMP)</b>	Relatively low level monetary penalty fixed by legislation which the enforcement authority may impose for a specified minor instance of regulatory non-compliance.
<b>Late payment charge</b>	Increase of penalty for payments made more than 56 days after the final notice for a FMP was issued.
<b>Macrory Review</b>	A Government report produced by Professor Richard Macrory in November 2006 examining the effective use of sanctions.
<b>Marine Strategy and Licensing Team (MSLT)</b>	The team in Marine and Fisheries Division responsible for applying marine licensing.
<b>Northern Ireland Environment Agency (NIEA)</b>	The Northern Ireland Environment Agency.
<b>Notice of Intent</b>	A notice served before imposing a monetary penalty including details of what is proposed, grounds for the action, the right to make representations and objections etc.
<b>Offence</b>	Breach of legislation.
<b>Offender</b>	Person who has committed an offence.
<b>Person</b>	Any person who may commit an offence. This could, for example, include a business, a landowner, a non-governmental organisation, a public sector organisation or a private individual.
<b>Regulated community</b>	Those who are subject to environmental regulation.
<b>Restoration</b>	Restore to the position that would have persisted if no offence had been committed.
<b>Remediation notice</b>	A written notice issued by the enforcement authority which requires an operator to take steps, within a stated period, to restore harm caused by non-compliance. Steps may be required so that the position is restored, so far as possible, to what it would have been if no offence had been committed.
<b>Standard of proof</b>	Level of evidence needed to prove that an offence has been committed.

**Stop notice**

A written notice which requires an operator to cease an activity that is causing harm or presents a significant risk of causing serious harm.

**Undertaking**

An agreement by an operator to take steps that would make amends for non-compliance and its effects, instead of, or in addition to, paying a VMP. It is for the enforcement authority to decide whether to accept an undertaking offered.

**Variable Monetary Penalty (VMP)**

A proportionate monetary penalty which the enforcement authority may impose for a more serious offence when it decides that prosecution is not in the public interest.

**Water Appeals Commission (WAC)**

The WAC's main function is to hear appeals against decisions of the licensing authority where the WAC has been given jurisdiction.

**Written representations**

Any written representations and objections made to the regulator about the proposal to impose a requirement. The person can raise any defences to the proposed sanction.

### Annex 3: Prosecution/Enforcement Case Review Record Template

Prosecution/Enforcement Case Review Record	
Name/Address of Defendant:	
Notes: <ol style="list-style-type: none"><li>1. This template should be used to record decisions taken in cases which Marine and Fisheries Division staff think may merit prosecution.</li><li>2. The template should be used to record an initial decision about whether the case is sufficiently serious to merit a formal investigation. At this stage, it may not be possible to make a comment against all of the criteria listed in the template because the formal investigation still has to take place.</li><li>3. The template should also be used on completion of the investigation to record a decision whether or not to submit the case to the Public Prosecution Service (PPS). Note that the Departments enforcement policy now leaves the decision on public interest factors to the PPS (paragraph 28 of the policy). This template therefore concentrates on sufficiency of evidence and the circumstances listed in paragraph 26 of the policy 'when we are likely to seek prosecution'.</li><li>4. If one of the circumstances listed in paragraph 26 applies there will be a presumption to prosecute, so any decision not to forward a file to the PPS will need to be explained in the comments and decision fields of the template.</li><li>5. A decision to formally investigate or to submit a file to the PPS does not preclude other corrective action such as issue of an enforcement notice.</li></ol>	

<b>Date of incident / breach:</b>	
<b>Brief description of incident / breach:</b>	
<b>Review stage</b> Preliminary <sup>(1)</sup> / Submission to PPS (Delete as appropriate) <small>(1) A decision whether to conduct a formal investigation is taken at a preliminary review</small>	
<b>Prosecution factors</b>	<b>Describe which criteria are met</b>
<ul style="list-style-type: none"> <li>▪ <b>Sufficiency of Evidence</b> <ul style="list-style-type: none"> <li>○ Satisfied there is sufficient, admissible and reliable evidence</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>▪ <b>Marine and Fisheries Division will normally submit a case to the PPS recommending prosecution where one or more of the following occur</b></li> </ul>	
<ul style="list-style-type: none"> <li>i. Incidents or breaches have significant consequences or potential consequences on the environment whether natural or built. (Please refer to local procedures / guidance on significance).</li> </ul>	
<ul style="list-style-type: none"> <li>ii. Someone carries out activities without a relevant licence or consent</li> </ul>	
<ul style="list-style-type: none"> <li>iii. Someone fails to comply with formal remedial requirements (e.g. a notice)</li> </ul>	
<ul style="list-style-type: none"> <li>iv. There are excessive or persistent breaches of regulatory requirements</li> </ul>	

Prosecution factors	Describe which criteria are met
v. Failure to report an incident that threatened or caused significant environmental damage	
vi. There is reckless disregard for management or quality standards	
vii. Someone fails to supply information when legally required	
viii. Our staff or authorised officers are obstructed in carrying out their duties	
ix. Someone fails to comply with a fixed penalty notice (or variable penalty under Marine Licensing)	

**Comments**

**Decision:**

Progress investigation / Do not progress investigation/ Submit file to PPS / Do not submit file to PPS (Delete as appropriate)

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

#### **Annex 4: Contact Information**

Marine and Fisheries Division  
Marine Strategy and Licensing Team  
2<sup>nd</sup> Floor Klondyke Building  
Cromac Avenue  
Gasworks Business Park  
Belfast  
Northern Ireland  
BT7 2JA

Tel: 028 9056 9247

Email: [MarineLicensingTeam@daera-ni.gov.uk](mailto:MarineLicensingTeam@daera-ni.gov.uk)

Water Appeals Commission  
The Chief Administrative Officer  
Park House  
87-91 Great Victoria Street  
BELFAST BT2 7AG

Telephone number: (028) 9024-4710

Fax number: (028) 9031-1338

e-mail address: [info@pacni.gov.uk](mailto:info@pacni.gov.uk)

website address: [www.pacni.gov.uk](http://www.pacni.gov.uk)