



Law Society
of Scotland

Consultation response

Consultation on maritime civil sanctions provisions

January 2022



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Marine Law Sub-committee welcomes the opportunity to respond to the Maritime and Coastguard Agency's (MCA) consultation on *Consultation on maritime civil sanctions provisions*¹. We have the following comments to put forward for consideration.

Consultation questions

Section 5.1 Consultation Questions

1. Do you agree with the cost assessment set out within Annex A, concluding there are no additional costs being placed on industry as a result of the proposed extension of civil sanctions? Please supply any additional evidence that you may have relating to potential costs.

No comment.

2. Which of the options from Annex A would you support? i.e. (i) make civil sanctions available for all offences; or (ii) extend application of existing civil sanctions powers; or (iii) do nothing?

We are broadly supportive of option (i).

Given the current challenges around prosecution set out in the consultation, it seems pragmatic to enable the MCA to enforce existing offences by way of civil sanctions. We note that the civil sanctions regime for environmental matters in Scotland includes provision for publicity which may be an effective deterrent in some

¹ <https://www.gov.uk/government/consultations/consultation-on-maritime-civil-sanctions-provisions>

cases. In the interests of simplicity and consistency, we favour the application of an existing regime, rather than the creation of a new model.

That said, we consider that there remains a place for criminal prosecution in some cases and there would be merit in retaining the option for the MCA to escalate the matter for prosecution where appropriate. For example, this might be in serious matters involving safety, cases of repeated breaches, or wilful deceit.

Consistency in the regime is important and will be a key concern for operators in the industry. If these measures are to be introduced, it will be important for there to be clarity around the use of the MCA's powers and when matters will be reported for prosecution. This will be of particular importance as this will be a new regime and it will be some time until there is a body of case law concerning the appropriate level of penalties to allow the system to bed down. We consider that there is a need for strong internal governance measures to be in place to support this, along with clear guidance, accessible for operators. The Scottish Environment Protection Agency (SEPA) *Guidance on the Use of Enforcement Action*² provides a useful example of how a regulator can provide an indication on how the range of enforcement responses is likely to be used and the factors influencing decisions.

We suggest that the regime should clearly set out the circumstances in which a civil sanction must not be imposed, for example, this might include where criminal proceedings have been commenced (such as being reported for prosecution, but the relevant prosecuting authority has taken a decision not to proceed) or where an alternative to prosecution has been offered and accepted.

3. Monetary penalties are being considered in the range of £250 to £50 000. Do you think that the levels of monetary penalties proposed are appropriate as an alternative to a criminal prosecution and potential criminal conviction for an individual or organisation?

No comment.

4. Do you consider that these measures would support and encourage compliance within the maritime industry, setting out reasons why you think they would or would not have this effect?

Please see our comments at question 2.

Section 5.2

Do you have any additional comments to add to the response?

No comment.

² <https://www.sepa.org.uk/media/219242/enforcement-guidance.pdf>



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