

# **AQUACULTURE AND FISHERIES (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 3: Salmon and Freshwater Fisheries**

##### **Salmon and freshwater fisheries**

##### *Section 19 – Use of gaff, tailer or landing net*

47. Section 1 (Methods of fishing: salmon) of the 2003 Act prohibits fishing for salmon in certain waters except by rod and line and certain other specified means. Section 2 (Methods of fishing: freshwater fish) of the 2003 Act prohibits fishing in inland waters except by rod and line. Section 4 (Meaning of “rod and line”) of the 2003 Act provides the definition for the term “rod and line”. Section 3 (Use of gaff, tailer or landing net) of the 2003 Act provides that nothing in section 1 or 2 of the 2003 Act shall be construed as prohibiting the use of a gaff, tailer or landing net as auxiliary to the taking of fish by rod and line. Accordingly, the use of any instrument as auxiliary to the taking of fish by rod and line is prohibited by sections 1 and 2 of the 2003 Act, except, by virtue of section 3 of the 2003 Act, for the use of a gaff, tailer or landing net
48. Section 20 of the Act amends section 3 of the 2003 Act by removing references to gaff and tailer and substituting a reference to “knotless non-metallic”. Section 3 of the 2003 Act, as amended by section 20 of the Act, provides that nothing in sections 1 or 2 of the 2003 Act shall be construed as prohibiting the use of a knotless non-metallic landing net as auxiliary to the taking of fish by rod and line. Accordingly, this amendment makes knotless non-metallic landing nets the only instrument that is not prohibited as auxiliary to the taking of fish by rod and line. The amendment of section 3 of the 2003 Act prohibits the use of a gaff or a tailer as auxiliary to the taking of fish by rod and line. This section, the effect of which is to prohibit the use of certain products, has been notified to the European Commission in accordance with Directive [98/34/EC](#), as amended by Directive [98/48/EC](#) (“the Technical Standards Directive”).

##### *Section 20 – Rod and line*

49. Section 20 inserts section 3A into the 2003 Act. Section 3A(1) provides that a person shall be treated as fishing by rod and line for the purposes of the 2003 Act in the circumstances set out in section 3A(2), (3) and (4).
50. Section 3A(2) provides that a person is treated as fishing by rod and line for the purposes of the 2003 Act where that person is fishing for or taking salmonids (defined in section 3A(5)) and is not doing so from a boat, subject to the condition that the person is using a single rod and line which is being held by that person.
51. Section 3A(3) provides that a person is treated as fishing by rod and line for the purposes of the 2003 Act where that person is fishing for or taking freshwater fish other than

salmonids (“freshwater fish” is defined in section 69 of the 2003 Act) and is not doing so from a boat, subject to the condition that the person uses no more than four rods and line at any one time.

52. Section 3A(4) provides that a person is treated as fishing by rod and line for the purpose of the 2003 Act where that person is fishing for or taking fish (whether salmonids or not) and is doing so from a boat, subject to the condition that no more than four rods and line are used on the boat at any time.
53. Section 20(2) repeals the word “single” in section 4(1) of the 2003 Act and substitutes the term “foul hooking” for the words “pointing or by striking or dragging fish” where they appear in section 4(1) of the 2003 Act. The term “foul hooking” is defined in section 20(2)(c) (inserted subsection (3)). The effect of these amendments is to make it clear what is meant by foul hooking and that foul hooking is unlawful. Subsection 20(2) (b) amends section 4(2) of the 2003 Act so as to prohibit the use of live vertebrates as bait. Subsection 21(2)(c) (inserted subsection (3)) also provides a definition of “set line” as a fishing line left unattended in water and having attached to it one or more baited hooks. Accordingly, it is prohibited to leave any fishing line with one or more lures or baited hooks in water unattended.

### ***Section 21 – Prohibition against using pike gags and certain keepnets***

54. Section 21 inserts section 5A into the 2003 Act. Section 5A(1) makes it an offence for a person to use a pike gag in relation to fishing for or taking fish. The term “pike gag” is defined in section 5A(4). A person found guilty of such an offence is liable to a fine not exceeding level 3 on the standard scale, which currently equates to a maximum fine of £1,000.
55. Section 5A(2) makes it an offence for a person to use a keep net the mesh of which is either knotted or made of metallic material. A person found guilty of such an offence is liable to a fine not exceeding level 3 on the standard scale, which currently equates to a maximum fine of £1,000.
56. Section 5A(3) provides that a person who attempts to commit, or takes steps preparatory to the commission of an offence, under section 5A(1) or (2) is guilty of an offence. A person found guilty of such an offence is liable to a fine not exceeding level 3 on the standard scale, which currently equates to a maximum fine of £1,000. This section, the effect of which is to prohibit the use of certain products, has been notified to the European Commission in accordance with Directive [98/34/EC](#), as amended by Directive [98/48/EC](#).

### ***Section 22 – Close times for freshwater fish***

57. Section 22 inserts sections 17A and 17B into the 2003 Act.
58. Section 17A(1) enables the Scottish Ministers, having consulted such persons as they consider appropriate, to make an order specifying a weekly close time for freshwater fish (defined in section 69(1) of the 2003 Act). The power to make an order under section 17A(1) must be exercised by statutory instrument which is subject to annulment in pursuance of a resolution of the Scottish Parliament, by virtue of section 68 (Orders and regulations) of the 2003 Act. Section 17A(2) permits such an order to make different provision for different species of freshwater fish. Section 17A(6) permits such an order to specify the part or area of Scotland in respect of which it is to have effect.
59. Section 17A(3) prohibits any person from fishing for or taking freshwater fish specified in such an order in relation to the close time specified in that order. Section 17A(4) makes it an offence to contravene such an order. Section 17A(4) provides that a person found guilty of such an offence is liable to a fine not exceeding level 3 on the standard scale, which currently equates to a maximum fine of £1,000. Section 17A(5) provides that a person may be convicted of such an offence on the evidence of one witness.

06. Section 17B(1) enables the Scottish Ministers, having consulted such persons as they consider appropriate, to make an order specifying an annual close time for freshwater fish (defined in section 69(1) of the 2003 Act) other than trout (section 17 of the 2003 Act makes provision in respect of an annual close time for trout). The power to make orders under section 17B(1) must be exercised by statutory instrument which is subject to annulment in pursuance of a resolution of the Scottish Parliament, by virtue of section 68 (Orders and regulations) of the 2003 Act. Section 17B(2) permits such an order to make different provision for different species of freshwater fish. Section 17B(7) permits such an order to specify the part or area of Scotland to which it is to have effect.
61. Section 17B(3) provides that any person who, during an annual close time specified in such an order, in relation to the species of freshwater fish specified in such an order, fishes for or takes such fish in any inland waters (as defined in section 69(1) of the 2003 Act) or is in possession of such fish, is guilty of an offence. Such a person is liable on conviction to a fine not exceeding level 3 on the standard scale, which currently equates to a maximum fine of £1,000. Section 17B(6) provides that a person may be convicted of such an offence on the evidence of one witness. Section 17B(5) provides exceptions to the offence provision.

### ***Section 23 – Exemption from certain offences***

62. Section 23(1) amends section 28(2)(a) of the 2003 Act to extend the exemption from certain offences in respect of acts done for scientific and other purposes to offences under inserted sections 17A and 17B.
63. Section 30 (Exemptions in relation to fish farming) of the 2003 Act exempts any act or omission which takes place within, and in the course of the operation of, a fish farm from constituting an offence under certain specified provisions of the 2003 Act. Section 23(2) of the Act amends section 30 of the 2003 Act to exempt such acts and omissions from certain other specified provisions of the 2003 Act: namely, sections 6 (Fishing for salmon without right or permission), 8 (Taking of dead salmon or trout), 17B(3) (b) (Annual close time for freshwater fish other than trout) and 23 (Young salmon and spawning beds).

### ***Section 24 – Freshwater fish conservation regulations***

64. Section 24 inserts new section 51A into the 2003 Act, which enables the Scottish Ministers to make regulations for the conservation of freshwater fish. The power conferred upon the Scottish Ministers by new section 51A is similar to that which they already have, by virtue of section 38 of the 2003 Act, to make regulations for the conservation of salmon. Before making any regulations under the section, the Scottish Ministers must have regard to any representations made to them by any person having an interest in fishing for or taking freshwater fish, or in the environment (subsection (3)). Subsection (7) provides for regulations to confer enforcement powers upon constables and water bailiffs, and to make different provision in relation to different stretches of water, different seasons and different cases. Subsection (8) provides that contravention of regulations under inserted section 51A, or failure to comply with a requirement imposed by such regulations, is an offence punishable on summary conviction by a fine not exceeding level 4 on the standard scale (presently £2,500), and subsection (9) provides that a person may be convicted of such an offence on the evidence of one witness. Subsection (10) provides that the procedure set out in paragraphs 9A and 11 to 15 of Schedule 1 to the 2003 Act – which require publicity to be given to any proposal for regulations, and opportunity to be given for representations and the holding of inquiries – shall apply to the making of regulations under section 51A. (Paragraph 9A of Schedule 1 to the 2003 Act is inserted by paragraph 6(5)(b) of the Schedule to the Act).