

AQUACULTURE AND FISHERIES (SCOTLAND) ACT 2013

EXPLANATORY NOTES

THE ACT

Part 2

Salmon Fisheries, Etc

Governance

Section 24 - District salmon fishery boards: openness and accountability

54. **Section 24** amends sections 44 and 68 of, and inserts new sections 46A to 46G into, the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (“the 2003 Act”) to introduce good governance obligations on district salmon fishery boards (“DSFBs”). The Scottish Government intends to issue administrative guidance to DSFBs on these obligations to aid and guide compliance.
55. **Section 24(2)** inserts a new subsection (1A) into section 44 of the 2003 Act. Section 44(1A) places duties on the clerk of a DSFB in relation to the board’s agreed report and audited accounts, and requires the clerk to publish these documents and to send copies of them to the Scottish Ministers.
56. **Section 24(3)** inserts new sections 46A – 46G into the 2003 Act. Section 46A places obligations on DSFBs in relation to the content of the annual report required to be prepared under section 44(1)(a) of the 2003 Act. New section 46A(2)(d) of the 2003 Act requires the report to contain a statement on how the board complied in the previous year and how it proposes to comply in the coming year with the good governance requirements, and section 46A(3) provides a definition of “good governance requirements” for that purpose and for the purposes of the provisions mentioned in section 46A(3)(a)-(c).
57. Section 46B of the 2003 Act introduces a obligation on DSFBs to hold an annual public meeting and prescribes matters which must be considered at that meeting (section 46B(2)). Section 46B(4) places obligations on DSFBs regarding participation of members of the public and others who attend or propose to attend the annual meeting.
58. Section 46C(2) of the 2003 Act makes further provision about the annual public meeting held by the board under section 46B(1)(a) and the annual meeting of qualified proprietors held under section 44(1) of the 2003 Act. The provisions place duties on the clerk of the DSFB to give advance notice to the public of these meetings and prescribes the manner, timing and circulation of that notice (section 46C(2)). Section 46C(2)(a) (iv) underpins the new section 46B(4) duty on boards by requiring the clerk to notify the public of how they may propose matters for consideration at the annual public meeting. The public will not have an automatic right to speak at the annual meeting of qualified proprietors, unless a DSFB decides to afford such an opportunity.

59. Section 46C(3)-(9) of the 2003 Act makes further provision about meetings of DSFBs, including the annual public meeting, the meeting of qualified proprietors and any other meetings the board may decide to hold. In particular, the clerk is required to prepare and publish minutes of the DSFB meetings.
60. Section 46D of the 2003 Act requires a DSFB to compile, maintain and keep under review a procedure for dealing with complaints, and to publicise its terms. DSFBs must keep records of any complaints received and how they were disposed of (section 46D(5)).
61. Section 46E of the 2003 Act requires a DSFB to maintain and review arrangements for registering and declaring the relevant financial interests of board members. “Relevant financial interests” are defined in subsection (4).
62. Section 46F(1) of the 2003 Act enables the Scottish Ministers to modify, by order, the good governance requirements (as defined in section 46A(3)) of the 2003 Act) and to place further requirements on DSFBs for specific purposes. The purposes are specified in subsection (3), and seek to achieve that the order-making power is exercisable so as to ensure the boards’ affairs are conducted in an open and accountable manner and to appropriate standards of propriety and good governance. The order-making power is not exercisable in such a way as would allow Ministers to provide for structural change to DSFBs.
63. Section 46G(3) of the 2003 Act provides that, where Ministers exercise the section 46G(2) reserve power to dissolve, by order, the committee constituting the board, its effect is to prompt the calling of a meeting of qualified proprietors for the purpose of electing a new committee.
64. [Section 24\(4\)](#) is a technical amendment in consequence of section 46F(1) of the 2003 Act, as inserted by section 24(3). Its effect is to ensure that any order under section 46(F) (1) is subject to the affirmative procedure in the Scottish Parliament.

Section 25 - Duty to consult and report before making certain applications

65. [Section 25](#) amends the 2003 Act to create an obligation to undertake consultation on proposals to submit specified applications under the 2003 Act. Subsection (2) of section 25 amends sections 33(7), 35(3), 36(4) and 37(4) of the 2003 Act to substitute reference to paragraph 9B of schedule 1 (procedure for making certain orders and regulations under the Act) to the 2003 Act for references to paragraph 10 of that schedule where it occurs in those provisions.
66. Subsection (3) of section 25 amends the 2003 Act to introduce new paragraphs 9B and 9C into schedule 1. Paragraph 9B(1) specifies the applications in respect of which the provisions of paragraph 9B apply, that is: applications under paragraph 1, 3, 5 or 7 of schedule 1 (respectively, applications for designation orders under section 35 of the 2003 Act, estuary limits orders under section 36, annual close time orders under section 37 and salmon conservation regulations under section 38). Paragraphs 9B to 15 of schedule 1 to the 2003 Act also apply to regulations under section 33(1) of the 2003 Act (baits and lures) by virtue of section 33(7) of that Act. Paragraph 9B(2) of schedule 1 provides that where an applicant proposes to make an application for such an order or regulations, the applicant must give notice of the proposed application, specify in that notice the period in which representations or objections may be made on that proposal, undertake consultation with persons who may have an interest in or be likely to be affected by the proposal and give such persons notice of the period in which they may make representations or objections on the proposal.
67. Paragraph 9B(3) of schedule 1 requires the applicant to give notice of the proposed application in each of two successive weeks in a newspaper circulating in the district concerned, and paragraph 9B(4) of schedule 1 clarifies the length of the period for the purposes of paragraph 9B(2)(b) of schedule 1.

*These notes relate to the Aquaculture and Fisheries (Scotland)
Act 2013 (asp 7) which received Royal Assent on 18 June 2013*

68. An applicant is required to take into account any timeous representation or objections made on the proposal (paragraph 9B(5)). The applicant must publish a notice containing a summary of reasons for proceeding with the proposed application or not, as the case may be, together with details of where their reasons for this decision may be viewed and how a copy of the reasons may be obtained (paragraph 9B(6)). Paragraph 9B(7) confirms that the costs for compliance with paragraph 9B(2) and (6) are to be paid by the applicant.
69. Paragraph 9C of schedule 1 to the 2003 Act applies where an applicant determines to proceed with a proposed application. At the time the applicant makes the application, the applicant must submit together with the application a report which; states whether and explains how the requirements of paragraph 9B have been met; provides details of who was consulted; explains the content of any representations or objections received; and gives the reasons for making the application.