

AQUACULTURE AND FISHERIES (SCOTLAND) ACT 2013

EXPLANATORY NOTES

THE ACT

Part 3 – Sea Fisheries

Retention and disposal of property seized by BSFOs

Section 44 – Power of Scottish Ministers to sell seized fish in their possession

131. **Section 44** gives the Scottish Ministers the power to sell any fish that has been seized by BSFOs and retained by them under section 43. Section 44(3) permits Scottish Ministers to retain the proceeds. These proceeds are to be retained by Ministers until the courts orders forfeiture of the proceeds and, in the absence of the courts making such an order, the Scottish Ministers are required under section 44(5) to return proceeds to owners as soon as is practicable. Return of the funds held is also necessary under section 44(4) if no court proceedings are taken or any fixed penalty notice issued is paid.
132. If the Scottish Ministers have retained the proceeds of any sale for a period of six months (because they have been unable to return the funds to the original owner(s) of the fish) then section 44(6) allows such funds to be retained by Scottish Ministers and used as they see fit. However, the Scottish Ministers can only dispose of such funds in this way where it was not practicable at the time they exercised the power of disposal to immediately return the funds to the original owner.
133. **Section 44(8)** requires that fish sold by the Scottish Ministers must be sold at auction and under section 44(9) the owner's views must be taken into account on the manner in which the fish should be sold. Owners may ask for fish to be sold at a particular auction or by a method of sale other than auction. The Scottish Ministers are required by virtue of section 44(11) to take such views into account unless they deem them to be unreasonable.
134. **Section 44(12)** permits the deduction by the Scottish Ministers of reasonable selling expenses from the proceeds of the sale.