



Aquaculture and Fisheries (Scotland) Act 2013

2013 asp 7

PART 1

AQUACULTURE

VALID FROM 16/09/2013

CHAPTER 1

FISH FARM MANAGEMENT

1 Fish farm management agreements and statements

- (1) The Aquaculture and Fisheries (Scotland) Act 2007 is amended in accordance with this section.
- (2) After section 4 insert—

“Fish farm management agreements and statements

4A Fish farm management agreements and statements

- (1) A person who carries on a business of fish farming at a fish farm located within a farm management area must—
 - (a) be party to a farm management agreement, or prepare and maintain a farm management statement, in relation to the fish farm, and
 - (b) ensure that the fish farm is managed and operated in accordance with the agreement or (as the case may be) statement.
- (2) For the purposes of this section, a “farm management agreement” is an agreement—

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- (a) between two or more persons who carry on a business of fish farming at fish farms located in a farm management area, and
 - (b) which contains provision about the matters specified in subsection (4).
- (3) For the purposes of this section, a “farm management statement” is a statement—
- (a) prepared and maintained by a person who—
 - (i) carries on a business of fish farming at a fish farm located in a farm management area, and
 - (ii) is not, in relation to that fish farm, party to a farm management agreement, and
 - (b) which contains provision about the matters specified in subsection (4).
- (4) The matters referred to in subsections (2)(b) and (3)(b) are—
- (a) a description of the farm management area and the fish farm or farms to which the agreement or statement applies,
 - (b) arrangements for—
 - (i) fish health management,
 - (ii) management of parasites,
 - (iii) the movement of live fish on and off the farms,
 - (iv) the harvesting of fish,
 - (v) fallowing of the farms after harvesting,
 - (c) review of the agreement or statement at least every 2 years,
 - (d) in the case of a farm management agreement, arrangements for persons to become, or cease to be, parties to the agreement.
- (5) In this section—
- the “Code of Practice” means the document called the Code of Good Practice for Scottish Finfish Aquaculture as issued and revised from time to time by the body known as the Code of Good Practice Management Group,
- “farm management area” means an area specified as such in the Code of Practice.
- (6) The Scottish Ministers may by order modify the definition of the Code of Practice in subsection (5) so as to—
- (a) substitute a reference to another document for the one for the time being referred to in that definition,
 - (b) substitute a reference to another body for the one for the time being referred to in that definition.
- (7) An order under subsection (6) may—
- (a) include incidental, supplemental, consequential, transitional, transitory or saving provision,
 - (b) modify any enactment, instrument or document.

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4B Inspections: farm management agreements and statements

- (1) An inspector may carry out an inspection of any fish farm to which section 4A(1) applies for the purpose of ascertaining whether that section is being complied with.
- (2) In particular, an inspection under subsection (1) may include—
 - (a) taking samples (including samples of fish or material from fish),
 - (b) examining, and taking copies of, documents or records.
- (3) An inspector may arrange for the carrying out of such tests as the inspector considers necessary, using samples taken during an inspection under subsection (1), for the purpose mentioned in subsection (1).”.
- (3) In section 6 (enforcement notices), for subsection (1) substitute—
 - “(1) Where the Scottish Ministers are satisfied that a person who carries on a business of fish farming—
 - (a) does not have satisfactory measures in place for any of the purposes mentioned in subsection (2), or
 - (b) in relation to a fish farm to which section 4A(1) applies, has failed or is failing to comply with that section,
 the Scottish Ministers may serve a notice (“an enforcement notice”) on the person.”.
- (4) In section 43(3) (orders subject to affirmative procedure), in paragraph (a), after “section” insert “ 4A(6) or ”.

2 Escapes, and obtaining samples, from fish farms

- (1) The Aquaculture and Fisheries (Scotland) Act 2007 is amended in accordance with this section.
- (2) In section 5 (inspections: containment and escape of fish)—
 - (a) in subsection (2), after paragraph (b) insert—
 - “(ba) ascertaining the origin of fish known or believed to have escaped from the fish farm or any other fish farm,”,
 - (b) in subsection (3), in paragraph (a), after “equipment” insert “ , fish or material from fish ”.
- (3) After section 5 insert—

“Sampling

5A Obtaining samples from fish farms

- (1) An inspector may take samples of fish, or material from fish, on a fish farm for any of the purposes mentioned in subsection (3).
- (2) An inspector may require a person who carries on a business of fish farming to provide the inspector with samples of fish, or material from fish, on the fish farm for a purpose mentioned in subsection (3).

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- (3) The purposes are—
- (a) assisting any investigations into escapes of fish from fish farms that may require to be carried out,
 - (b) analysing the samples mentioned in subsections (1) and (2) for scientific or other research,
 - (c) assessing the impact of—
 - (i) the operations of fish farms on the environment,
 - (ii) escapes of fish from fish farms on stocks of fish other than those on fish farms, and
 - (d) developing methods of tracing the origins of fish that escape from fish farms.
- (4) This section is without prejudice to sections 4B and 5.”.

CHAPTER 2

FISH FARMING: EQUIPMENT AND WELLBOATS

VALID FROM 16/09/2013

Equipment

3 Technical requirements for equipment used in fish farming

- (1) The Scottish Ministers may, for a purpose mentioned in subsection (2), by regulations—
- (a) prescribe technical requirements for equipment to be used for or in connection with fish farming,
 - (b) impose requirements on fish farm operators in relation to the training of their employees or agents in connection with the installation, maintenance or operation of equipment for which requirements are prescribed under paragraph (a), and
 - (c) make provision for ensuring compliance with the requirements prescribed or imposed by the regulations.
- (2) The purposes are—
- (a) the containment of fish,
 - (b) the prevention of escape of fish,
 - (c) the prevention, control or reduction of parasites, pathogens or diseases.
- (3) Regulations under subsection (1) may, in particular—
- (a) prescribe requirements as to the design, construction (including the materials used in construction), manufacture, installation, maintenance or size of equipment,
 - (b) provide for the appointment or authorisation of persons (“inspectors”) to inspect equipment and records for the purpose of ensuring compliance with the regulations,

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- (c) for that purpose, confer on inspectors—
 - (i) powers of entry, search and seizure,
 - (ii) powers to obtain information or evidence,
 - (d) impose requirements on fish farm operators, or their employees or agents, as to—
 - (i) the provision of information to inspectors,
 - (ii) allowing access by inspectors, and
 - (iii) cooperation with inspectors,
 - (e) confer powers on inspectors to impose such requirements,
 - (f) impose requirements on fish farm operators, or their employees or agents, as to—
 - (i) the keeping of records in relation to equipment and the making of those records available for inspection,
 - (ii) the keeping of records in relation to training provided or undertaken in pursuance of any requirement imposed under subsection (1)(b) and the making of those records available for inspection,
 - (iii) the notification or reporting of failures in equipment,
 - (g) create criminal offences in relation to failures to comply with the regulations and make other provision for dealing with such offences, including—
 - (i) the provision of defences,
 - (ii) evidential matters,
 - (h) provide for other sanctions for dealing with such failures,
 - (i) provide for procedures (including appeals) for enforcing compliance with the regulations,
 - (j) make different provision for different types of fish farming and different species of fish.
- (4) Regulations under subsection (1) may prescribe or impose requirements—
- (a) by reference to a document published by or on behalf of the Scottish Ministers or such other person, or person of such description, as is specified in the regulations, or
 - (b) by reference to the approval or satisfaction of such person, or person of such description, as is specified in the regulations.
- (5) Where regulations under subsection (1) create a criminal offence, they must provide for the offence to be—
- (a) triable summarily, and
 - (b) punishable by a fine not exceeding level 4 on the standard scale.
- (6) Regulations under subsection (1) may provide for continuing offences and for any such offences to be punishable by a daily or other periodic fine of such amount as is specified in the regulations.
- (7) Sanctions provided for under subsection (3)(h) may include suspension or revocation of any authorisations required by fish farm operators to operate as such.
- (8) In this section, “fish farm operators” means persons carrying on a business of fish farming.

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Wellboats

4 Meaning of “wellboat”

- (1) In this Chapter, “wellboat” means a vessel that contains a tank or well for holding water (including sea water)—
 - (a) into which live farmed fish may be taken, and
 - (b) in which the fish may be subsequently kept,
 for a purpose mentioned in subsection (2).
- (2) The purposes are—
 - (a) the transportation of farmed fish,
 - (b) the storage of farmed fish,
 - (c) the slaughter of farmed fish,
 - (d) the treatment of farmed fish in connection with health, parasites, pathogens or diseases,
 - (e) the grading of farmed fish.
- (3) For the purposes of this section, it is irrelevant whether or not the farmed fish remain alive in the course of any activity mentioned in subsection (2).
- (4) In this section—

“farmed fish” means fish produced by fish farming, and

“grading”, in relation to farmed fish, means separating and sorting the fish according to size.

VALID FROM 16/09/2013

5 Control and monitoring of operations of wellboats

- (1) The Scottish Ministers may by regulations make provision for or about controlling and monitoring the operations of any wellboat in Scotland.
- (2) Regulations under subsection (1) may, in particular, include provision for or about—
 - (a) the measures to be taken to prevent, reduce, remove or otherwise control the risk of the spread of parasites, pathogens or diseases as a result of wellboat operations,
 - (b) the installation of such equipment, or types of equipment, as may be specified—
 - (i) to prevent, reduce, remove or otherwise control such a risk,
 - (ii) to enable compliance with the regulations to be monitored,
 - (c) the reporting to the Scottish Ministers of such matters as may be specified.
- (3) Regulations under subsection (1) may impose requirements on, and only on—
 - (a) the master of a wellboat,
 - (b) an owner of a wellboat,
 - (c) a charterer of a wellboat.
- (4) Regulations under subsection (1) may make different provision for—
 - (a) different descriptions of wellboat,

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- (b) different operations,
 - (c) different species of fish,
 - (d) different periods of time.
- (5) A person commits an offence if the person—
- (a) acts in contravention of regulations under subsection (1),
 - (b) fails to take any action required of that person by such regulations, or
 - (c) otherwise fails to comply with any requirement imposed on that person by such regulations.
- (6) No proceedings may be taken or continued against a person for an offence under subsection (5) in respect of a matter in relation to which an enforcement notice under section 6 has been served.
- (7) It is a defence for a person charged with an offence under subsection (5)(b) or (c) to show that the person had a reasonable excuse for failing to take any action or (as the case may be) to comply with any requirement mentioned in that subsection.
- (8) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (9) In this section, “specified” means specified in regulations made under subsection (1).

VALID FROM 16/09/2013

6 Enforcement notices

- (1) This section applies where the Scottish Ministers are satisfied that a person has failed or is failing to comply with any requirement imposed on that person by regulations under section 5(1).
- (2) The Scottish Ministers may serve a notice (an “enforcement notice”) on the person.
- (3) The enforcement notice must specify—
- (a) the grounds for the service of the notice,
 - (b) the action that the person on whom it is served is required to take in order to ensure compliance with the regulations, and
 - (c) the date by which that action is to be taken, which must be no earlier than 14 days after the day on which the notice is served.
- (4) The Scottish Ministers may publicise the serving of an enforcement notice; and they may do so to such extent, in such manner and in such form as they think fit.
- (5) A person on whom an enforcement notice has been served may appeal by way of summary application to a sheriff against the notice.
- (6) An appeal under subsection (5) must be made before the expiry of the period of 7 days beginning with the day on which the notice is served.
- (7) Where an appeal is made under subsection (5), the enforcement notice has no effect until the appeal is withdrawn or finally determined.
- (8) In an appeal under subsection (5)—

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- (a) the sheriff may make such order as the sheriff thinks appropriate, and
 - (b) the sheriff's decision is final.
- (9) If the appeal is not upheld, the date by which the action specified in the notice is to be taken is such date as the sheriff may specify in the order disposing of the appeal.
- (10) A person on whom an enforcement notice has been served commits an offence if the person fails to comply with the requirements of the notice.
- (11) It is a defence for a person charged with an offence under subsection (10) to show that the person had a reasonable excuse for failing to comply with such requirements.
- (12) A person who commits an offence under subsection (10) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

VALID FROM 16/09/2013

7 Marine enforcement officers' functions

- (1) For the purpose of enforcing regulations under section 5(1), a marine enforcement officer has—
- (a) the common enforcement powers conferred by Part 7 of the Marine (Scotland) Act 2010,
 - (b) the power conferred by section 150 of that Act (power to require information relating to certain substances and objects),
 - (c) the power conferred by subsection (2), and
 - (d) the powers conferred by section 8.
- (2) Where the requirements of an enforcement notice under section 6 have not been complied with, a marine enforcement officer may take such action as the officer considers necessary to fulfil the requirements.
- (3) Sections 151 to 155 of the Marine (Scotland) Act 2010 (duties and liabilities of, and offences in relation to, marine enforcement officers) have effect as if—
- (a) any reference to a power conferred by Part 7 of that Act included a reference to—
 - (i) such a power as applied by subsection (1),
 - (ii) the power conferred by subsection (2), and
 - (iii) the powers conferred by section 8, and
 - (b) any reference to a marine enforcement officer's functions under that Act included a reference to—
 - (i) such functions as applied by subsection (1),
 - (ii) a marine enforcement officer's function under subsection (2), and
 - (iii) a marine enforcement officer's functions under section 8.
- (4) The powers which a marine enforcement officer has for the purposes of enforcing regulations under section 5(1) may be exercised in the Scottish marine area and in any other part of Scotland.
- (5) A marine enforcement officer may take action as mentioned in subsection (2) whether or not proceedings have been taken for an offence under section 6(10).

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- (6) The Scottish Ministers may recover any expenses reasonably incurred by a marine enforcement officer in taking action as mentioned in subsection (2) from the person on whom the enforcement notice was served.
- (7) In this section, “Scottish marine area” has the same meaning as in section 1 of the Marine (Scotland) Act 2010.

VALID FROM 16/09/2013

8 Power to detain wellboats in connection with court proceedings

- (1) This section applies where—
 - (a) a marine enforcement officer has reasonable grounds for suspecting that an offence under section 5(5) has been committed by the master, an owner or a charterer of a wellboat (referred to as “A”), and
 - (b) the officer reasonably believes that—
 - (i) if proceedings are taken against A for the offence, there is a real risk that A will not attend court unless the wellboat is detained under this section, or
 - (ii) if A is convicted of the offence and the court by or before which A is convicted imposes a fine on A, it is likely that the court will order the vessel to be detained.
- (2) Where this section applies, a marine enforcement officer may—
 - (a) take, or arrange for another person to take, the wellboat and its crew to the port that appears to the officer to be the nearest convenient port, or
 - (b) require any person who is for the time being in charge of the wellboat to take it and its crew to that port.
- (3) When the wellboat has been taken to port, the officer may—
 - (a) detain it there, or
 - (b) require the person for the time being in charge of it to do so.
- (4) A marine enforcement officer who detains a wellboat under this section must, if it is reasonably practicable to do so, serve a notice on the person who is for the time being in charge of the wellboat.
- (5) The notice must state—
 - (a) the reasons for detaining the wellboat, and
 - (b) the circumstances in which the wellboat may be released.

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9 Release of wellboat detained under section 8

- (1) This section applies where a wellboat is being detained under section 8.
- (2) The wellboat ceases to be detained under that section if one of the following things occurs—

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- (a) the notice of detention is withdrawn,
 - (b) a sheriff orders the release of the wellboat under section 10,
 - (c) any proceedings taken against the master, owner or charterer of the wellboat have concluded,
 - (d) the court referred to in section 8(1)(b)(ii) exercises any power it has to order the wellboat to be detained.
- (3) A notice of detention is withdrawn by the service by a marine enforcement officer of a further notice on the person who is for the time being in charge of the wellboat, stating that the wellboat is released.
- (4) If any of the grounds of release mentioned in subsection (5) applies, then any notice of detention must be withdrawn as soon as possible.
- (5) The grounds of release are—
- (a) that a procurator fiscal has decided not to take any proceedings against the master, owner or charterer of the wellboat in respect of any offence in relation to which the wellboat was detained,
 - (b) where a fixed penalty notice has been issued in respect of such an offence, that the appropriate fixed penalty has been paid,
 - (c) that there are no grounds for believing that any person referred to in paragraph (a) against whom proceedings have been, or may be, taken will fail to attend court,
 - (d) that there are no grounds for believing that the court referred to in section 8(1)(b)(ii) will order the wellboat to be detained.
- (6) In this section—
- “appropriate fixed penalty” has the meaning given in section 27(2) of the Aquaculture and Fisheries (Scotland) Act 2007 (amount and payment of fixed penalty),
 - “fixed penalty notice” means a fixed penalty notice under section 25(1) of that Act (issue of fixed penalty notices),
 - “notice of detention” means a notice served under section 8(4).

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10 Power of sheriff to order release of wellboats

- (1) This section applies where a wellboat is being detained under section 8.
- (2) If, on an application to a sheriff by the master, an owner or a charterer of the wellboat, the sheriff is satisfied as to either of the matters mentioned in subsection (4), the sheriff may order that the wellboat be released.
- (3) An application under subsection (2) is to be made by way of summary application.
- (4) Those matters are that—
 - (a) the continued detention of the wellboat under section 8 is not necessary to secure that the master, an owner or a charterer of the wellboat will attend court, or

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- (b) there are no grounds for believing that the court referred to in subsection (1) (b)(ii) of that section will order the vessel to be detained.

CHAPTER 3

COMMERCIALLY DAMAGING SPECIES

VALID FROM 16/09/2013

Orders relating to commercially damaging species

11 Specification of commercially damaging species

- (1) The Scottish Ministers may, for the purposes of this Chapter, by order specify as a commercially damaging species—
- (a) a species of fish or shellfish,
 - (b) any other species of animal,
 - (c) a species of plant.
- (2) The Scottish Ministers may make an order under subsection (1) in relation to a species only if they consider that the species—
- (a) if not controlled, would be likely to have a significant adverse impact on the economic or commercial interests of a person who carries on a business of fish farming or shellfish farming, and
 - (b) is itself of little or no commercial value.

12 Movement of species, etc.

- (1) The Scottish Ministers may by order make provision for or about the prohibition or control of the movement of—
- (a) any commercially damaging species that is present, or suspected of being present, in any body of water,
 - (b) any other species of animal or plant the movement of which may be associated with the movement of such a commercially damaging species,
 - (c) any equipment or other material used for or in connection with fish farming or shellfish farming, the movement of which may be so associated,
 - (d) water in which a commercially damaging species, or a species mentioned in paragraph (b), is present or suspected of being present.
- (2) An order under subsection (1) may—
- (a) designate an area in respect of which any prohibition or control of movement applies,
 - (b) make provision in relation to the enforcement of the provisions of the order, including provision for the issue of notices imposing requirements and the action that may be taken in cases where such notices are not complied with,
 - (c) make provision in relation to appeals against such notices or other actions taken in connection with the enforcement of the provisions of the order,
 - (d) where the movement of—

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- (i) a species,
 - (ii) equipment or other material, or
 - (iii) water in which a species is present or suspected of being present,
- is controlled by the order, specify conditions or requirements in respect of such movement (including conditions that must be satisfied before such movement is permitted),
- (e) make different provision for—
 - (i) different types of commercially damaging species,
 - (ii) different types of animal or plant as mentioned in paragraph (b) of subsection (1),
 - (iii) different types of equipment or other material as mentioned in paragraph (c) of that subsection.
- (3) A person commits an offence if the person—
- (a) acts in contravention of an order under subsection (1),
 - (b) fails to take any action required of the person by such an order, or
 - (c) otherwise fails to comply with any requirement imposed on the person by such an order.
- (4) It is a defence for a person charged with an offence under subsection (3)(b) or (c) to show that the person had a reasonable excuse for failing to take the action or (as the case may be) to comply with any requirement mentioned in that subsection.
- (5) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

13 Orders under section 12(1): samples and surveillance

- (1) An order under section 12(1) may include provision for or about—
- (a) the taking of samples of any fish from a fish farm, or shellfish from a shellfish farm, by a person appointed by the Scottish Ministers (an “appointed person”),
 - (b) the taking of samples of material from any such fish or shellfish by an appointed person,
 - (c) the analysis of such fish or shellfish, or such material, by an appointed person for the purposes of ascertaining whether a commercially damaging species is present on the fish farm or shellfish farm,
 - (d) the powers of an appointed person, including powers to—
 - (i) enter any land, fish farm or shellfish farm,
 - (ii) enter any premises (other than a dwelling house) associated with the management or operation of a fish farm or shellfish farm,
 - (iii) require the operator of a fish farm or shellfish farm to provide the appointed person with samples such as are mentioned in paragraph (a) or (b),
 - (e) the size of any sample such as is mentioned in either of those paragraphs.
- (2) Subsection (3) applies to an order under section 12(1) that controls the movement of fish or shellfish that are produced by fish farming or shellfish farming.
- (3) The order may include provision for or about—

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- (a) requiring a person who carries on a business of fish farming or shellfish farming to carry out a programme of surveillance of—
 - (i) the fish or shellfish the movement of which is controlled by the order,
 - (ii) any other animal, or any plant, specified in the order that is present at the place to which the fish or shellfish mentioned in subparagraph (i) are to be, or have been, moved,
 - (iii) such conditions of that place as may be specified in the order,
 - (b) the carrying out by a person appointed by the Scottish Ministers of such a programme of surveillance,
 - (c) the powers of a person so appointed, including powers to enter—
 - (i) any land, fish farm or shellfish farm,
 - (ii) any premises (other than a dwelling house) associated with the operation or management of a fish farm or shellfish farm,
 - (d) the matters which such a programme of surveillance is to address, including any risks associated with the movement of the fish or shellfish controlled by the order.
- (4) An order under section 12(1) which includes provision conferring a power such as is mentioned in subsection (1)(d)(i) or (ii) or subsection (3)(c) must provide—
- (a) for the power to be exercised at a reasonable hour, unless the person exercising it considers the case is one of urgency, and
 - (b) for any person who proposes to exercise the power to produce, if so required, evidence of the person's identity and appointment.

14 Offences relating to persons appointed under section 13

- (1) A person commits an offence if the person—
 - (a) fails to comply with a requirement imposed by a person appointed by virtue of subsection (1)(a) or (3)(b) of section 13, or
 - (b) wilfully obstructs such a person in the exercise of a power conferred by an order under section 12(1).
- (2) It is a defence for a person charged with an offence under subsection (1)(a) to show that the person had a reasonable excuse for the failure.
- (3) A person who commits an offence under subsection (1)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) A person who commits an offence under subsection (1)(b) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a fine.

15 Notification of presence of commercially damaging species

- (1) Any person who carries on a business of fish farming or shellfish farming at a fish farm or shellfish farm must notify the Scottish Ministers as soon as reasonably practicable after the person becomes aware of, or suspects, the presence of a commercially damaging species on the fish farm or shellfish farm.
- (2) Subsection (1) applies to any person who is employed, or acts as an agent, in connection with the operation of a fish farm or shellfish farm as it applies to a person

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mentioned in that subsection; but notification under this subsection need not be given if it has been given under subsection (1).

- (3) Notification under subsection (1) or (2) must contain the following—
- (a) where the fish farm or shellfish farm is authorised as an aquaculture production business under regulation 6 of the Aquatic Animal Health (Scotland) Regulations 2009 (S.S.I. 2009/85), the name and number of the site where the commercially damaging species is present or suspected of being present,
 - (b) the name and contact details of—
 - (i) the person providing the notification, and
 - (ii) the person carrying on the business of fish farming or shellfish farming at the fish farm or shellfish farm,
 - (c) the grid reference on the ordnance map of the fish farm or shellfish farm, or part of such farm, where the commercially damaging species is present or is suspected of being present,
 - (d) the type of commercially damaging species (if known),
 - (e) the date on which the person providing the notification first became aware of, or suspected, the presence of the commercially damaging species,
 - (f) the age in months of the commercially damaging species (if known), and
 - (g) the stage of growth of the commercially damaging species (if known).
- (4) A person who fails to give a notification in accordance with subsection (1) or (2) commits an offence.
- (5) It is a defence for a person charged with an offence under subsection (4) to show that the person had a reasonable excuse for failing to give the notification.
- (6) A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

VALID FROM 16/09/2013

Control

16 Control agreements

- (1) This section applies where the Scottish Ministers are satisfied that a commercially damaging species is present on a fish farm or shellfish farm.
- (2) The Scottish Ministers must form a preliminary view as to whether and, if so, what measures should be taken to—
 - (a) remove the species from,
 - (b) reduce the incidence of the species on,
 - (c) prevent the spread of the species beyond, or
 - (d) otherwise control the species on,
 the fish farm or shellfish farm.
- (3) Where the Scottish Ministers form a preliminary view under subsection (2) that measures should be taken, they must—

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Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, PART 1. (See end of Document for details)

- (a) serve notice on the person who carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm of the preliminary view, and
 - (b) consult the person in order to secure agreement—
 - (i) that measures require to be taken,
 - (ii) as to what measures require to be taken, and within what time limit,
 - (iii) as to who is to take such measures, and
 - (iv) as to such other matters as appear to the Scottish Ministers to be necessary for the purposes of such an agreement.
- (4) Where agreement is reached on the matters mentioned in subsection (3)(b), the Scottish Ministers must prepare an agreement (a “control agreement”) specifying—
- (a) the parties to it,
 - (b) the measures which are to be taken in relation to the commercially damaging species,
 - (c) which of those measures are to be taken—
 - (i) by the person who for the time being carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm, and
 - (ii) by the Scottish Ministers, and
 - (d) the time limits within which any measures specified under paragraph (c) are to be taken.
- (5) A control agreement may specify different measures to be taken in respect of different fish farms or shellfish farms.
- (6) The Scottish Ministers must send a copy of the control agreement to the person who for the time being carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm.
- (7) The person who for the time being carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm must take such measures as the agreement may require of that person in accordance with its provisions.
- (8) The Scottish Ministers must, at least once in every 18 month period, review a control agreement for the purpose of assessing compliance with its provisions.

17 Control schemes

- (1) Subsection (2) applies where the Scottish Ministers have served a notice under section 16(3)(a) in relation to a commercially damaging species that is present on a fish farm or shellfish farm, and—
- (a) either—
 - (i) the Scottish Ministers are satisfied that it is not possible to secure a control agreement or that a control agreement is not being carried out, or
 - (ii) 6 weeks have elapsed since the Scottish Ministers served the notice and no agreement has been reached on the matters mentioned in section 16(3)(b), and
 - (b) the Scottish Ministers continue to have the view that measures should be taken to—
 - (i) remove the species from,

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- (ii) reduce the incidence of the species on,
 - (iii) prevent the spread of the species beyond, or
 - (iv) otherwise control the species on,
- the fish farm or shellfish farm.
- (2) The Scottish Ministers must make a scheme (a “control scheme”) for the purpose of ensuring that any measures mentioned in subsection (1)(b) which they consider should be taken are taken.
- (3) The Scottish Ministers must notify the person who carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm to which the control scheme relates at least 14 days before the scheme comes into effect that the scheme has been made.
- (4) A control scheme must—
- (a) specify the date on which it is to come into effect (which date must be not less than 14 days after the day on which it was made),
 - (b) identify the fish farm or shellfish farm to which it relates,
 - (c) specify the measures that are to be taken in relation to the commercially damaging species or otherwise,
 - (d) specify which of those measures are to be taken—
 - (i) by the person who for the time being carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm, and
 - (ii) by the Scottish Ministers, and
 - (e) prescribe time limits within which any measures specified under paragraph (d) are to be taken.
- (5) A control scheme may—
- (a) specify different measures to be taken—
 - (i) by different persons such as are mentioned in subsection (4)(d),
 - (ii) in respect of different fish farms or shellfish farms,
 - (b) provide for the extension of any time limit prescribed in the scheme,
 - (c) include incidental, supplemental, consequential, transitional, transitory or saving provision.
- (6) Schedule 1, which makes provision about the making, variation and revocation of control schemes, and appeals against such matters, has effect.
- (7) The person who for the time being carries on a business of fish farming or shellfish farming at a fish farm or shellfish farm to which a control scheme relates must take such measures as the scheme may require of that person in accordance with its provisions.
- (8) The Scottish Ministers must, at least once in every 12 month period, review a control scheme for the purpose of assessing compliance with its provisions.
- (9) Where the Scottish Ministers are of the opinion that a person has failed to comply with subsection (7), they may carry out the requirement if they are satisfied that it is still necessary to do so.

18 Emergency action notices

- (1) This section applies where the Scottish Ministers are satisfied—

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- (a) that a commercially damaging species is present on a fish farm or shellfish farm, and
 - (b) that unless urgent action is taken, the commercially damaging species will spread quickly to other areas and have an immediate and significant adverse impact on—
 - (i) other fish or shellfish or the ability of persons to commercially exploit them, or
 - (ii) the economic or commercial interests of a person who carries on a business of fish farming or shellfish farming.
- (2) No notice under subsection (3) of section 16 need be served on a person mentioned in paragraph (a) of that subsection, and no consultation to secure an agreement with such a person need be carried out under paragraph (b) of that subsection.
- (3) But the Scottish Ministers must serve on such a person notice (an “emergency action notice”) of their intention to take urgent action in respect of the commercially damaging species.
- (4) An emergency action notice must state—
- (a) the type of commercially damaging species that is present on the fish farm or shellfish farm,
 - (b) the nature of the threat that it poses and the impact mentioned in subsection (1)(b) that it will have,
 - (c) the measures that the Scottish Ministers propose to take for the purpose of—
 - (i) removing the species from,
 - (ii) reducing the incidence of the species on,
 - (iii) preventing the spread of the species beyond, or
 - (iv) otherwise controlling the species on,the fish farm or shellfish farm, and
 - (d) the places where, the times at which and the methods by which the Scottish Ministers intend to carry out such measures.
- (5) No earlier than 14 days after the day on which an emergency action notice has been served, the Scottish Ministers may take—
- (a) such measures as are specified in the notice,
 - (b) such steps towards taking such measures as the Scottish Ministers think fit.

19 Appeals in connection with emergency action notices

- (1) Any person who carries on a business of fish farming or shellfish farming at a fish farm or shellfish farm to which an emergency action notice under section 18 relates may appeal by way of summary application to a sheriff against—
 - (a) the decision of the Scottish Ministers to serve the notice,
 - (b) the terms of such a notice.
- (2) An appeal under subsection (1) must be made within the period of 14 days beginning with the day on which the emergency action notice is served.
- (3) In an appeal under subsection (1)—
 - (a) the sheriff may make such order as the sheriff thinks appropriate, and
 - (b) the sheriff’s decision is final.

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VALID FROM 16/09/2013

Powers

20 Power to enter fish farms, shellfish farms, etc.

- (1) A person authorised by the Scottish Ministers for a purpose mentioned in subsection (2) has the power to enter—
 - (a) any land, fish farm or shellfish farm,
 - (b) any premises (other than a dwelling house) associated with the management or operation of a fish farm or shellfish farm.
- (2) The purposes for which the Scottish Ministers may authorise a person are—
 - (a) the obtaining of information by them in connection with satisfying themselves as to matters mentioned in subsection (1) of section 18,
 - (b) the determination of whether any of their functions under any of sections 16 to 18 should be carried out,
 - (c) the carrying out of any of those functions,
 - (d) the determination of how far and in what manner any requirement placed on any person under or by virtue of this Chapter has been complied with.
- (3) A power of entry under this section must be exercised at a reasonable hour unless the person exercising it—
 - (a) is doing so for a purpose mentioned in subsection (2)(a),
 - (b) is doing so for the purpose of determining whether the Scottish Ministers' functions under section 18 should be carried out, or
 - (c) otherwise considers the case is one of urgency.
- (4) Any person who proposes to exercise any power of entry conferred by this section must, if so required, produce evidence of the person's identity and authorisation.

VALID FROM 16/09/2013

Offences

21 Offences in relation to control agreements, control schemes, etc.

- (1) A person commits an offence if the person refuses or fails to comply with any requirement imposed on the person by a control agreement under section 16 or a control scheme under section 17.
- (2) A person commits an offence if the person wilfully obstructs any person authorised under subsection (1) of section 20 carrying out any function under that section.
- (3) It is a defence for a person charged with an offence under subsection (1) of failing to comply with a requirement mentioned in that subsection to show that the person had a reasonable excuse for failing to so comply.

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- (4) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) A person who commits an offence under subsection (2) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to a fine.

Interpretation of Chapter 3

22 Interpretation of Chapter 3

In this Chapter, “commercially damaging species” means a species specified in an order under section 11(1).

VALID FROM 16/09/2013

CHAPTER 4

PLANNING PERMISSION

23 Planning permission for marine fish farms

- (1) Section 31A of the Town and Country Planning (Scotland) Act 1997 (planning permission in respect of operation of marine fish farm) is amended in accordance with this section.
- (2) After subsection (2) insert—
- “(2A) Subject to subsection (4), any planning permission may be granted by the Scottish Ministers—
- (a) by order, or
 - (b) on application to them in accordance with regulations under subsection (8).”.

(3) After subsection (4) insert—

“(4A) Subsection (4B) applies where—

 - (a) an order granting planning permission (whether by virtue of subsection (2A)(a) or subsection (3)) is revoked, and
 - (b) the date of the revocation is, in relation to any marine fish farm to which the order applied, earlier than the appropriate date (within the meaning of section 26AA(2)) in respect of that fish farm.

(4B) For the purposes of the operation of section 26AA(1)(a)(ii) in relation to any such marine fish farm after revocation of the order, the fact that planning permission had been granted by the order is to be ignored.”.

(4) In subsection (8)—

 - (a) paragraph (a) is repealed, and

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(b) in paragraph (b), for the words “such an application” substitute “ an application for planning permission ”.

Status:

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Changes to legislation:

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