



# Aquaculture and Fisheries (Scotland) Act 2013

2013 asp 7

## PART 2

### SALMON FISHERIES, ETC.

#### *Governance*

#### **24 District salmon fishery boards: openness and accountability**

- (1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.
- (2) In section 44 (financial powers and duties of district salmon fishery boards), after subsection (1) insert—
  - “(1A) As soon as practicable after the annual meeting held under subsection (1) above, the clerk of the board must—
    - (a) arrange for the final report and audited accounts to be published; and
    - (b) send a copy of the final report and audited accounts to the Scottish Ministers.
  - (1B) In subsection (1A) above, the references to the final report and audited accounts are references to—
    - (a) the report and audited accounts as submitted for consideration at the annual meeting held under subsection (1) above; or
    - (b) if they are revised following consideration at the meeting, the revised versions of them.”
- (3) After section 46 insert—

#### **“46A Annual report**

- (1) This section applies in relation to the report to be prepared under section 44(1)
  - (a) of this Act by a district salmon fishery board.

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- (2) The board must ensure that the report contains, in particular—
- (a) a summary of what the board have done in carrying out their functions under this Act, or any other enactment, during the year to which the report relates,
  - (b) a summary of what the board propose to do in carrying out those functions in the following year,
  - (c) information about complaints made to the board during the year, including—
    - (i) the number of complaints, and
    - (ii) a statement of the nature of each complaint and how it was disposed of, and
  - (d) a statement as to how the board—
    - (i) have complied during the year with the good governance requirements, and
    - (ii) propose to comply with those requirements in the following year.
- (3) For the purposes of subsection (2)(d) above, the “good governance requirements” are the requirements under—
- (a) this section,
  - (b) section 44(1) and (1A) of this Act, and
  - (c) sections 46B to 46E of this Act.

#### **46B Annual public meeting**

- (1) A district salmon fishery board—
- (a) must hold one public meeting in each year, to be known as the “annual public meeting” of the board, and
  - (b) may hold other public meetings in the course of the year.
- (2) Subject to subsection (4) below, the matters to be considered at the annual public meeting are for the board to determine, but must include the final report and statement of accounts required to be prepared under section 44(1).
- (3) The reference in subsection (2) above to the final report and audited accounts is to be construed in accordance with section 44(1B) of this Act.
- (4) The board must ensure that members of the public, and others who attend or propose to attend the meeting, are given an opportunity—
- (a) to propose matters for consideration at the meeting, and
  - (b) to speak at the meeting.

#### **46C Further provision about meetings**

- (1) Subsection (2) below applies in relation to—
- (a) the annual meeting of qualified proprietors required to be called by the clerk of a district salmon fishery board under section 44(1) of this Act, and
  - (b) the annual public meeting of a district salmon fishery board.

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- (2) The clerk of the board must, no later than 21 days before the day on which the meeting is to be held—
  - (a) prepare a notice—
    - (i) specifying the date and time of the meeting and the place where it is to be held,
    - (ii) containing a list of the matters to be considered at the meeting,
    - (iii) stating that the meeting is open to the public, and
    - (iv) in the case of the annual public meeting, providing information as to how salmon anglers, tenant netmen and other members of the public can submit proposals for matters to be considered at the meeting,
  - (b) arrange for the notice to be published in such manner as the clerk considers appropriate, and
  - (c) send a copy of the notice to the Scottish Ministers.
- (3) In relation to any other meeting of a district salmon fishery board, the clerk of the board must—
  - (a) take such steps as the clerk considers appropriate to publicise the meeting, and
  - (b) subject to subsection (6) below, ensure that the public are given an opportunity to attend the meeting.
- (4) Subsections (5) to (9) below apply in relation to—
  - (a) the meetings referred to in subsection (1) above, and
  - (b) any other meeting of a district salmon fishery board.
- (5) Subject to subsection (6) below, the board must ensure that the business at the meeting is conducted in public.
- (6) In the case of a meeting other than the annual public meeting, the board may, if there is a good reason for doing so, decide to conduct the meeting, or to consider any particular item of business, in private.
- (7) As soon as practicable after the meeting, the clerk of the board must—
  - (a) prepare a minute of the meeting,
  - (b) arrange for the minute to be published in such manner as the clerk considers appropriate, and
  - (c) in the case of the minutes of the meetings referred to in subsection (1) above, send a copy of the minutes to the Scottish Ministers.
- (8) Subsection (9) below applies where the board decide—
  - (a) to conduct the meeting in private, or
  - (b) to consider any item of business at the meeting in private.
- (9) The board must state reasons for the decision and ensure that the statement of reasons is included in the minute of the meeting.

#### **46D Complaints procedure**

- (1) A district salmon fishery board must maintain, and keep under review, proper arrangements for dealing with complaints made to the board about the way

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in which the board have carried out, or propose to carry out, their functions under this Act or any other enactment.

- (2) A board's arrangements under subsection (1) above must, in particular, include provision for dealing with complaints made by—
  - (a) members of the public,
  - (b) proprietors of salmon fisheries in the board's district,
  - (c) salmon anglers in the board's district,
  - (d) tenant netmen in the board's district,
  - (e) members of the board,
  - (f) other district salmon fishery boards.
- (3) The arrangements may make different provision in relation to different categories of complaint or complainant.
- (4) As soon as practicable after making or reviewing arrangements under subsection (1) above, a district salmon fishery board must—
  - (a) take such steps to publicise the arrangements as the board consider appropriate in order to bring them to the attention of persons who may wish to make complaints, and
  - (b) send to the Scottish Ministers a note of the arrangements.
- (5) A district salmon fishery board must keep records of complaints made to the board about the way in which they have carried out, or propose to carry out, their functions, including information about how each complaint was disposed of.

#### **46E Members' interests**

- (1) A district salmon fishery board must maintain, and keep under review, proper arrangements for the registration and declaration of relevant financial interests of members of the board.
- (2) A board's arrangements under subsection (1) above must, in particular, include provision for—
  - (a) further defining what are relevant financial interests,
  - (b) the clerk to keep a register of members' relevant financial interests,
  - (c) members to register their relevant financial interests in the register,
  - (d) members to declare any relevant financial interests before taking part in the board's consideration of any business,
  - (e) members to be excluded from taking part in the board's consideration of any business in which the member has a relevant financial interest.
- (3) A district salmon fishery board must ensure that the register of members' relevant financial interests is made available for public inspection.
- (4) In this section, “relevant financial interests”—
  - (a) means interests of a pecuniary nature that could be affected by a decision of the board, or the holding of which could otherwise have a bearing on or otherwise influence a member's view on any matter being considered by the board, and

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- (b) includes such interests held by a member or by another person with whom the member has a personal or business relationship.

#### **46F Ministerial power to modify the good governance requirements**

- (1) The Scottish Ministers may by order—
  - (a) modify any of the good governance requirements,
  - (b) modify this Act so as to impose further requirements on district salmon fishery boards.
- (2) An order under subsection (1) above may make only such provision as the Scottish Ministers consider necessary for a purpose specified in subsection (3) below.
- (3) The purposes are—
  - (a) ensuring that the boards' affairs are conducted in an open and accountable manner,
  - (b) ensuring that the boards' affairs are conducted to appropriate standards of propriety and good governance.
- (4) An order under subsection (1) above may include incidental, supplemental, consequential, transitional, transitory or saving provision.
- (5) In this section, the “good governance requirements” has the same meaning as in section 46A(3) of this Act.

#### **46G Ministerial power to dissolve the committee constituting a board**

- (1) This section applies where the Scottish Ministers consider that a district salmon fishery board have persistently—
    - (a) failed to comply with the good governance requirements, or
    - (b) otherwise contravened the requirements of this Act.
  - (2) The Scottish Ministers may by order dissolve the committee constituting the board on a date specified in the order.
  - (3) The dissolution of the committee by an order under subsection (2) above has the same effect in relation to the committee (and the board) as the expiry of the period of three years mentioned in sections 43(3) and 47(1) of this Act.
  - (4) Accordingly, the references in section 43(3) and 47(1) of this Act to the expiry of the period of three years are to be read, in relation to a committee dissolved by an order under subsection (2) above, as including a reference to the date of dissolution specified in the order.
  - (5) In this section, the “good governance requirements” has the same meaning as in section 46A(3) of this Act.”.
- (4) In section 68 (orders and regulations), in subsection (4), after “Act” insert “, and no order is to be made under section 46F(1) of this Act, ”.

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**Annotations:**

**Commencement Information**

**II** S. 24 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

**25 Duty to consult and report before making certain applications**

- (1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.
- (2) In each of the following provisions, for “10” substitute “ 9B ”
  - (a) subsection (7) of section 33 (salmon fishing: regulations as to baits and lures),
  - (b) subsection (3) of section 35 (designation orders),
  - (c) subsection (4) of section 36 (estuary limits),
  - (d) subsection (4) of section 37 (annual close times for salmon).
- (3) In schedule 1 (procedure for making certain orders and regulations under the Act), before paragraph 10 insert—

“9B (1) This paragraph applies where a person (the “applicant”) proposes to make an application to the Scottish Ministers under paragraph 1, 3, 5 or 7 above.

- (2) The applicant must—
  - (a) give notice in accordance with sub-paragraph (3) below that an application is proposed,
  - (b) specify in the notice the period within which, and the manner in which, representations or objections with respect to the proposed application may be made,
  - (c) specify in the notice details of—
    - (i) where and how such representations or objections (if any are made) may be viewed, and
    - (ii) how copies of any such representations or objections that are made may be obtained,
  - (d) consult persons who, so far as the applicant can reasonably ascertain, have an interest in, or may be affected by, the proposed application, and
  - (e) specify the period (being not less than 28 days beginning with the date of consultation) within which, and the manner in which, representations or objections with respect to the proposed application may be made by such persons.

- (3) A notice of the proposed application must be published at least once in each of two successive weeks in a newspaper (which may be a local newspaper) circulating in the district or districts affected by the proposed application.

- (4) The period mentioned in sub-paragraph (2)(b) above is a period of not less than 28 days beginning with—

- (a) if notice of the proposed application is published only once in the first of the two successive weeks as mentioned in sub-

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- paragraph (3) above, the date on which it is published in that week,
- (b) if such notice is published more than once in the first of those two successive weeks, the date on which it is first published in that week.
- (5) In deciding whether or not to make the proposed application, the applicant must take into account any representations and objections made in respect of it.
- (6) Having decided whether or not to make the proposed application, the applicant must—
- (a) publish in a newspaper (which may be a local newspaper) circulating in the district or districts affected by the proposed application a notice containing—
- (i) a summary of the reasons for the decision,
- (ii) details of where and how a written statement of such reasons may be viewed, and
- (iii) details of how copies of such a written statement may be obtained, and
- (b) send a copy of such a written statement to any person who made representations or objections to the proposed application under this paragraph.
- (7) The costs of complying with sub-paragraphs (2) and (6) above are to be met by the applicant.
- 9C (1) This paragraph applies where an applicant, having complied with the requirements of paragraph 9B above, decides to make an application mentioned in sub-paragraph (1) of that paragraph.
- (2) When making the application, the applicant must include a report—
- (a) stating that the requirements of paragraph 9B above have been complied with,
- (b) explaining how those requirements were complied with,
- (c) providing details of the persons consulted,
- (d) explaining the substance of any representations and objections made in relation to the application, and the extent to which they were taken into account in deciding to proceed with the application, and
- (e) giving the reasons for proceeding with the application.”.

**Annotations:**

**Commencement Information**

**I2** S. 25 in force at 16.9.2013 by [S.S.I. 2013/249](#), [art. 2](#)

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## *Management*

### **26 Carcass tagging**

- (1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.
- (2) After section 21 insert—

#### **“21A Salmon carcass tagging**

- (1) The Scottish Ministers may by regulations make provision for or in connection with tagging the carcasses of salmon.
- (2) Regulations under subsection (1) above may, in particular, make provision—
  - (a) about—
    - (i) the nature and form of tags,
    - (ii) the information which tags are to contain and the nature and form of that information,
    - (iii) applications for, and the supply, issue and storage of, tags,
    - (iv) the persons or descriptions of persons who may supply and issue tags, including provision about registration of such persons,
    - (v) the method of affixing tags to carcasses and the circumstances in which, and the time at or by which, they are to be affixed,
    - (vi) the circumstances in which, and the time at or by which, tags may be removed,
    - (vii) the steps to be taken in the event of loss of, or damage to, tags,
  - (b) for or about the keeping of records in connection with fishing for, taking, and tagging of salmon to which the regulations apply (including the form and content of such records),
  - (c) for or about the inspection or examination of those records, or the information contained in them, by persons or descriptions of persons mentioned in paragraph (e) below, by such methods as the regulations may specify, and the steps to be taken in the event of loss of, or damage to, the records,
  - (d) for or about the inspection or examination of tags by persons or descriptions of persons mentioned in paragraph (e) below, including provision about the retention of tags after their removal,
  - (e) for or about persons, or descriptions of persons, responsible for enforcing and ensuring compliance with the regulations (including the appointment and functions of such persons),
  - (f) for or about the seizure, detention and destruction by persons, or descriptions of persons, mentioned in paragraph (e) above of salmon
    - (i) that have not been tagged, or
    - (ii) from which a tag has been removed otherwise than, in accordance with the provisions of the regulations,

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- (g) for or about the imposition by the Scottish Ministers of charges for the recovery of any reasonable costs they incur in connection with the supply or issue of tags (including charges in relation to the administration costs associated with the imposition of such charges),
  - (h) for exemptions and exceptions to the regulations and for matters in respect of which the regulations do not apply.
- (3) Regulations under subsection (1) above may make—
- (a) different provision for different purposes and areas,
  - (b) incidental, supplemental, consequential, transitional, transitory or saving provision,
  - (c) such modifications of Part 5 of this Act as the Scottish Ministers think fit.
- (4) A person commits an offence if the person—
- (a) sells, offers or exposes for sale, or has in the person's possession, any salmon—
    - (i) that has not been tagged in accordance with regulations under subsection (1) above, or
    - (ii) from which a tag has been removed otherwise than in accordance with such regulations,
  - (b) acts in contravention of such regulations, or
  - (c) fails to take any action required of that person or (as the case may be) fails to comply with any requirement imposed on that person by such regulations.
- (5) It is a defence for a person charged with an offence under subsection (4)(c) above to show that the person had a reasonable excuse for failing to take any action or comply with any requirement as mentioned in that subsection.
- (6) A person who commits an offence under subsection (4) above—
- (a) is liable on summary conviction to a fine not exceeding level 4 on the standard scale,
  - (b) may be convicted on the evidence of one person.”.
- (3) In section 30 (exemptions in relation to fish farming)—
- (a) in subsection (1), after “under” insert “ section 21A or ”,
  - (b) in subsection (5), after “18(1)(b)” insert “ , 21A(4)(a) or (b) ”.
- (4) In section 68 (orders and regulations), in subsection (4), after “under” insert “ subsection (1) of section 21A of this Act that make modifications such as are mentioned in subsection (3)(c) of that section, or under ”.

**Annotations:**

**Commencement Information**

**I3** S. 26 in force at 16.9.2013 by [S.S.I. 2013/249](#), [art. 2](#)

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*Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, PART 2. (See end of Document for details)*

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## 27 Powers to take fish or samples for analysis, etc.

- (1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.
- (2) After section 64 insert—

### “64A Powers in relation to salmon and freshwater fisheries: sampling, etc.

- (1) A person authorised by the Scottish Ministers (an “authorised person”) may—
  - (a) for a purpose mentioned in subsection (2)(a) or (b) below, require a person having rights in a salmon fishery or freshwater fishery—
    - (i) to permit the authorised person to take and retain fish from the fishery,
    - (ii) to permit the authorised person to take samples of material from fish in the fishery,
    - (iii) to provide the authorised person with fish, or samples of material from fish, in the fishery,
  - (b) for a purpose mentioned in subsection (2)(c) below, affix a tag of such type and in such a way as the Scottish Ministers consider appropriate to any fish taken from a salmon fishery or freshwater fishery,
  - (c) for a purpose mentioned in subsection (2)(d) below, enter on a salmon fishery or freshwater fishery.
- (2) The purposes referred to in subsection (1) above are—
  - (a) carrying out analysis of the fish or samples by any method that the Scottish Ministers consider appropriate,
  - (b) ascertaining whether an offence has been committed under section 33A of this Act,
  - (c) tracking or monitoring the fish,
  - (d) exercising the powers mentioned in paragraphs (a) and (b) of subsection (1) above, or tracking or monitoring fish tagged under paragraph (b) of that subsection.
- (3) An authorised person seeking to exercise a power mentioned in subsection (1) above must, if requested, produce evidence of identity and authorisation.
- (4) A person having rights in a salmon fishery or freshwater fishery commits an offence if the person—
  - (a) fails or wilfully refuses to comply with a requirement under paragraph (a) of subsection (1) above, or
  - (b) obstructs an authorised person in the exercise of any of the powers under paragraph (b) or (c) of that subsection.
- (5) It is a defence for a person charged with an offence under subsection (4)(a) above to show that the person had a reasonable excuse for failing or refusing to comply with a requirement as mentioned in that subsection.
- (6) A person who commits an offence—
  - (a) under subsection (4)(a) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale,
  - (b) under subsection (4)(b) above is liable on summary conviction—

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- (i) to a fine not exceeding level 3 on the standard scale,
- (ii) to imprisonment for a term not exceeding 3 months, or
- (iii) to both such fine and such imprisonment.

(7) In this section, references to a person having rights in a salmon fishery or freshwater fishery are to be construed in accordance with section 64(3) of this Act.”.

**Annotations:**

**Commencement Information**

**I4** S. 27 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

## 28 Power of Scottish Ministers to conduct inquiries and obtain information

(1) Section 64 of the Salmon and Freshwater (Consolidation) (Scotland) Act 2003 (power of the Scottish Ministers to conduct inquiries and to obtain information) is amended in accordance with this section.

(2) In subsection (1)—

(a) before paragraph (a) insert—

“(za) require a person having rights in a salmon fishery or freshwater fishery to provide the Scottish Ministers with such information relating to the fishery as they may reasonably request;”,

(b) in paragraph (a), the words from “, provided” to the end of the paragraph are repealed.

(3) In subsection (2), for the words “Any proprietor or occupier of a fishery” substitute “Any person having rights in a salmon fishery or freshwater fishery”.

(4) After subsection (2) insert—

“(3) In this section, a “person having rights in a salmon fishery or freshwater fishery” means—

- (a) a proprietor of a salmon fishery;
- (b) an occupier of such a fishery;
- (c) an owner of land to which a right of fishing for freshwater fish pertains; or
- (d) an occupier of such a right.”.

**Annotations:**

**Commencement Information**

**I5** S. 28 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

## 29 Monitoring and evaluation of the effects of orders, etc.

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

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(2) In section 33 (salmon fishing: regulations as to baits and lures), after subsection (6) insert—

“(6A) Regulations under subsection (1) above may impose requirements on district salmon fishery boards in relation to monitoring and evaluation of the effect of the regulations on salmon stocks.

(6B) A district salmon fishery board commits an offence if the board—

- (a) acts in contravention of any such requirements; or
- (b) fails to take any action required of the board by any such requirements.

(6C) A board which commits an offence under subsection (6B) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

(3) In section 37 (annual close times for salmon)—

- (a) in subsection (2), after “below” insert “ and to section 38(5)(c) of this Act ”,
- (b) in subsection (3), at the beginning insert “ Without prejudice to section 38(5) (c) of this Act, ”,
- (c) after subsection (3) insert—

“(3A) An annual close time order may impose requirements on district salmon fishery boards or proprietors of salmon fisheries in relation to monitoring and evaluation of the effect of the order on salmon stocks.

(3B) A district salmon fishery board or proprietor commits an offence if the board or proprietor—

- (a) acts in contravention of any such requirements; or
- (b) fails to take any action required of the board or proprietor by any such requirements.

(3C) A board which or proprietor who commits an offence under subsection (3B) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

(4) In section 38 (salmon conservation regulations)—

- (a) in subsection (4), after “subsection (5)(b)” insert “ and (c) ”,
- (b) in subsection (5), after paragraph (b) insert—
  - “(c) subject to section 37(1) of this Act, prescribe for any salmon fishery district the dates of the annual close time for salmon and the periods within that time when it is permitted to fish for and take salmon by rod and line.”,
- (c) in subsection (6), after paragraph (b) insert—
  - “(ba) impose on district salmon fishery boards or proprietors of salmon fisheries such requirements as the Scottish Ministers consider necessary or expedient in relation to monitoring and evaluation of the effect of the regulations on salmon stocks;”.

**Annotations:**

**Commencement Information**

**16** S. 29 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

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*Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, PART 2. (See end of Document for details)*

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### **30 Power to vary procedures for orders, etc. relating to certain fisheries**

- (1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.
- (2) In section 33 (salmon fishing: regulations as to baits and lures), after subsection (7) insert—
  - “(8) The Scottish Ministers may by order vary the provisions of—
    - (a) subsections (2) to (5) above;
    - (b) paragraphs 9B to 15 of schedule 1 to this Act as they apply to the making of regulations under subsection (1) above.”.
- (3) In section 35 (designation orders), subsection (4) is repealed.
- (4) In section 39 (procedure for making orders and regulations under section 33 and Part 2)—
  - (a) the existing text becomes subsection (1) of section 39,
  - (b) after that subsection insert—
    - “(2) The Scottish Ministers may by order vary the provisions of schedule 1 to this Act.
    - (3) An order under subsection (2) above may make different provision for different purposes.
    - (4) Subsection (2) above is without prejudice to section 33(8)(b) of this Act.”.

#### **Annotations:**

#### **Commencement Information**

I7 S. 30 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

### **31 Offence of fishing for salmon during annual close time**

In section 14 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (fishing for salmon during annual close time), in subsection (2), for the words from “by”, where it second occurs, to the end of the subsection substitute “in the district in which the fishing occurs—

- (a) by the regulations or byelaws in force in that district;
- (b) by a designation order made in respect of that district;
- (c) in accordance with the provisions mentioned in section 37(2)(b) of this Act as they apply in respect of that district;
- (d) by an annual close time order made in respect of that district; or
- (e) by regulations under section 38 of this Act that make provision as mentioned in subsection (5)(c) of that section in respect of that district.”.

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*Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, PART 2. (See end of Document for details)*

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**Annotations:**

**Commencement Information**

**I8** S. 31 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

**32 Consents for introduction of fish into inland waters**

- (1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.
- (2) In section 33A (unauthorised introduction of fish into inland waters)—
- (a) in subsection (3), for “this section” substitute “ subsection (1) or (2) above ”,
  - (b) after subsection (3) insert—
 

“(3A) The appropriate authority may, in granting consent for the purposes of subsection (3)(b) above, impose conditions or requirements.

(3B) A person shall be guilty of an offence if the person—

    - (a) acts in contravention of any such condition or requirement; or
    - (b) fails to take any action required of the person by any such condition or requirement.

(3C) It is a defence for a person charged with an offence under subsection (3B)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.”,
  - (c) after subsection (4) insert—
 

“(4A) Subsection (4) is subject to provision made in regulations under section 33B of this Act.”.
- (3) After section 33A insert—

**“33B Power to modify district salmon fishery boards' functions under section 33A**

- (1) This section applies to the functions of the appropriate authority under section 33A(3)(b) and (3A) of this Act (the “consenting functions”) so far as the functions may be carried out by district salmon fishery boards.
- (2) The Scottish Ministers may by regulations—
  - (a) provide for the consenting functions to be carried out by the Scottish Ministers instead of district salmon fishery boards in specified cases or circumstances,
  - (b) provide for applications made to district salmon fishery boards for consent under section 33A of this Act to be referred to the Scottish Ministers in specified cases or circumstances,
  - (c) in relation to an application referred to the Scottish Ministers by virtue of provision made under paragraph (b) above, provide for the Scottish Ministers—
    - (i) to determine the application and to carry out the consenting functions in relation to the application, or

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*Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, PART 2. (See end of Document for details)*

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- (ii) to issue directions to the district salmon fishery board to which the application was made about the determination of the application and the carrying out of the consenting functions in relation to the application.
- (3) Regulations under subsection (2) above may—
  - (a) make different provision for different purposes, including different provision for—
    - (i) different district salmon fishery districts, or
    - (ii) different inland waters or parts of such waters,
  - (b) include incidental, supplemental, consequential, transitional, transitory or saving provision.
- (4) In subsection (2) above, “specified” means specified in regulations under that subsection.”.

**Annotations:**

**Commencement Information**

**I9** S. 32 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

**33 Offences exempted by permission or consent: power to attach conditions, etc.**

- (1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.
- (2) In section 27 (exemption from certain offences: salmon)—
  - (a) after subsection (1) insert—
    - “(1A) In granting permission under subsection (1) above, a district salmon fishery board or (as the case may be) the Scottish Ministers may impose conditions or requirements.
    - (1B) A person commits an offence if the person—
      - (a) acts in contravention of any such condition or requirement; or
      - (b) fails to take any action required of the person by any such condition or requirement.
    - (1C) It is a defence for a person charged with an offence under subsection (1B)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.
    - (1D) A person who commits an offence under subsection (1B) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”,
  - (b) in subsection (3), after “permitted” insert “, any conditions or requirements imposed under subsection (1A) above”.
- (3) In section 28 (exemptions: fish other than salmon), after subsection (2) insert—
  - “(3) In granting permission under subsection (1) above, the Scottish Ministers may impose conditions or requirements.
  - (4) A person commits an offence if the person—

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- (a) acts in contravention of any such condition or requirement; or
  - (b) fails to take any action required of the person by any such condition or requirement.
- (5) It is a defence for a person charged with an offence under subsection (4)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.
- (6) A person who commits an offence under subsection (4) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.
- (4) In section 30 (exemptions in relation to fish farming), after subsection (2) insert—
- “(2A) In granting consent under subsection (2) above, the Scottish Ministers may impose conditions or requirements.
- (2B) A person commits an offence if the person—
- (a) acts in contravention of any such condition or requirement; or
  - (b) fails to take any action required of the person by any such condition or requirement.
- (2C) It is a defence for a person charged with an offence under subsection (2B)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.
- (2D) A person who commits an offence under subsection (2B) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

**Annotations:**

**Commencement Information**

**I10** S. 33 in force at 16.9.2013 by [S.S.I. 2013/249](#), [art. 2](#)

*Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003: Crown application*

**34 Application of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 to the Crown**

For section 67 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (Crown application) substitute—

**“67 Application of this Act to the Crown**

- (1) This Act binds the Crown and applies in relation to Crown land as it applies in relation to any other land.
- (2) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.
- (3) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.

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**Changes to legislation:** There are currently no known outstanding effects for the  
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- (4) Despite subsection (2), any provision made by or under the provisions of this Act applies to persons in the public service of the Crown as it applies to other persons.
- (5) For the purposes of subsection (1), “Crown land” means land an interest in which—
- (a) belongs to Her Majesty in right of the Crown or in right of Her private estates,
  - (b) belongs to an office-holder in the Scottish Administration or a Government department or is held in trust for Her Majesty for the purposes of the Scottish Administration or a Government department.
- (6) The powers conferred by sections 54(1), 64(1)(a) and 64A(1)(c) are exercisable in relation to land an interest in which belongs to Her Majesty in right of Her private estates only with the consent of a person appointed by Her Majesty under the Royal Sign Manual or, if no such appointment is made, by the Scottish Ministers.
- (7) In this section—
- (a) references to Her Majesty's private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862,
  - (b) “Government department” means a department of the United Kingdom government.
- (8) For the purposes of this section, “land” includes salmon fisheries.”.

**Annotations:**

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**Commencement Information**

**III** S. 34 in force at 16.9.2013 by [S.S.I. 2013/249](#), [art. 2](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, PART 2.