



Aquaculture and Fisheries (Scotland) Act 2013

2013 asp 7

PART 3

SEA FISHERIES

Detention of vessels in connection with court proceedings

36 Power to detain vessels in connection with court proceedings

- (1) This section applies where—
- (a) a British sea-fishery officer has reasonable grounds for suspecting that an offence under the sea fisheries legislation has been committed by the master, an owner or a charterer of a vessel (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 vessel 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 British sea-fishery officer may—
- (a) take, or arrange for another person to take, the vessel 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 vessel to take it and its crew to that port.
- (3) When the vessel has been taken to a 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 British sea-fishery officer who detains a vessel 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 vessel.
- (5) The notice must state—
 - (a) the reasons for detaining the vessel, and
 - (b) the circumstances in which the vessel may be released.

37 Release of vessel detained under section 36

- (1) This section applies where a vessel is being detained under section 36.
- (2) The vessel ceases to be detained under that section if one of the following things occurs—
 - (a) the notice of detention is withdrawn,
 - (b) a sheriff orders the release of the vessel under section 38,
 - (c) any proceedings taken against the master, owner or charterer of the vessel have concluded,
 - (d) the court referred to in section 36(1)(b)(ii) exercises any power it has to order the vessel to be detained.
- (3) A notice of detention is withdrawn by the service by a British sea-fishery officer of a further notice on the person who is for the time being in charge of the vessel, stating that the vessel is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 vessel in respect of any offence in relation to which the vessel 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 36(1)(b)(ii) will order the vessel to be detained.
- (6) In this section, “notice of detention” means a notice served under section 36(4).

38 Power of sheriff to order release of vessels

- (1) This section applies where a vessel is being detained under section 36.
- (2) If, on an application to a sheriff by the master, an owner or a charterer of the vessel, the sheriff is satisfied as to either of the matters mentioned in subsection (4), the sheriff may order that the vessel 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 vessel under section 36 is not necessary to secure that the master, an owner or a charterer of the vessel will attend court, or
- (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.