



# Aquaculture and Fisheries (Scotland) Act 2013

2013 asp 7

## PART 3

### SEA FISHERIES

#### *Inshore sea fishing*

#### **49 Contravention of orders prohibiting inshore sea fishing**

(1) The Inshore Fishing (Scotland) Act 1984 is amended in accordance with this section.

(2) In section 4 (offences), after subsection (1A) insert—

“(1B) A person commits an offence if—

- (a) the person is found in, or in the immediate vicinity of, the area specified in an order under section 1 of this Act;
- (b) the person is found there at, or about, a time at which the prohibition under the order applies;
- (c) when so found, the person is in possession of such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of fishing in contravention of the order; and
- (d) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the person intends to fish in contravention of the order.”

(3) After section 4 insert—

#### **“4A Contravention of orders under section 1: presumption**

- (1) Subsection (2) applies in proceedings against a person (“the accused”) for an offence under section 4(1) of this Act involving fishing in contravention of a prohibition contained in an order under section 1 of this Act (other than a prohibition under section 1(2)(d)).

- (2) It is to be presumed that the accused was, or had been, fishing in contravention of the order if—
- (a) it is proved that—
    - (i) the accused was found in, or in the immediate vicinity of, the area specified in the order;
    - (ii) the accused was found there at, or about, a time at which the prohibition under the order applies; and
    - (iii) when so found, the accused was in possession of any of the things mentioned in subsection (3); and
  - (b) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the accused was, or had been, fishing in contravention of the order.
- (3) The things are—
- (a) such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of fishing in contravention of the order;
  - (b) sea fish the fishing for which is prohibited by the order.
- (4) Subsection (2) does not apply if evidence is adduced sufficient to raise an issue as to whether—
- (a) the accused’s presence in, or in the vicinity of, the area specified in the order was for the purpose of fishing in contravention of the order; or
  - (b) where the accused was found in possession—
    - (i) of any of the things mentioned in paragraph (a) of subsection (3), the possession of the thing was for that purpose;
    - (ii) of sea fish mentioned in paragraph (b) of that subsection, the fish were caught or taken in contravention of the order.”.

## 50 Powers of entry

- (1) The Inshore Fishing (Scotland) Act 1984 is amended in accordance with this section.
- (2) After section 6 insert—

### “6A Power to enter land

- (1) The powers conferred by this section are exercisable by British sea-fisheries officers in relation to any land for the purposes of enforcing the provisions of any order under section 1 of this Act and the provisions of section 3 of this Act.
- (2) Any such officer may at any time enter any land (including the foreshore) other than a dwelling house, on foot or in a vehicle, with or without persons assigned to the officer in the officer’s duties, and for that purpose may—
  - (a) open lockfast places;
  - (b) remove any objects preventing the officer from gaining access to the land;
  - (c) require any person who has placed an object in such a position as to prevent the officer from gaining access to the land to remove the object;

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*Status: This is the original version (as it was originally enacted).*

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- (d) require the owner or occupier of the land to allow the officer access to the land.
  - (3) Any officer who proposes to exercise the power of entry conferred by subsection (2) above must, if so requested, produce evidence of the officer's identity.
  - (4) A person commits an offence if the person—
    - (a) wilfully obstructs a British sea-fishery officer exercising a right of entry under subsection (2) above;
    - (b) refuses or fails to comply with a requirement imposed by such an officer under paragraph (c) or (d) of that subsection.
  - (5) It is a defence for a person charged with an offence under subsection (4)(b) above 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.
  - (6) A constable may arrest without warrant any person who the constable reasonably believes is committing or has committed an offence under subsection (4) above.
  - (7) Subsection (6) above is without prejudice to any power of arrest conferred by law apart from that subsection.
  - (8) A person who commits an offence under subsection (4) above is liable—
    - (a) on summary conviction to a fine not exceeding the statutory maximum;
    - (b) on conviction on indictment to a fine.
  - (9) A British sea-fishery officer is not liable in any civil or criminal proceedings for anything done in purported exercise of the powers conferred on the officer by this section, if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.”.
- (3) After section 10 insert—

**“10A Crown application: Scotland**

- (1) Section 6A binds the Crown and applies in relation to Crown land as it applies in relation to other land.
- (2) Nothing in that section is to be taken as in any way affecting Her Majesty in Her private capacity.
- (3) No contravention by the Crown of that section makes the Crown criminally liable.
- (4) 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.
- (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;

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*Status: This is the original version (as it was originally enacted).*

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- (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) In subsection (5), “an office-holder in the Scottish Administration” is to be construed in accordance with section 126(7)(a) of the Scotland Act 1998.”.