



Aquaculture and Fisheries (Scotland) Act 2013

2013 asp 7

PART 3

SEA FISHERIES

Retention and disposal of property seized by BSFOs

43 Retention of property seized by British sea-fishery officers

- (1) This section applies to property—
 - (a) seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation, other than an object seized under section 39, and
 - (b) which was seized—
 - (i) in the Scottish enforcement area, or
 - (ii) on board a Scottish fishing boat.
- (2) The officer must deliver the property to the Scottish Ministers as soon as reasonably practicable.
- (3) Subsection (2) is subject to paragraph 13 of schedule 2.
- (4) The Scottish Ministers may retain the property.
- (5) If any of the grounds of release in subsection (6) applies, the Scottish Ministers must, as soon as is reasonably practicable, make the property available for collection.
- (6) The grounds of release are—
 - (a) that a procurator fiscal has decided not to take proceedings in respect of any offence in relation to which the property was seized,
 - (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 any proceedings taken in respect of such an offence have concluded without an order for forfeiture having been made in respect of the property.

- (7) Subsection (5) does not apply if the property is liable to forfeiture under section 46 or 47.

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

- (1) The Scottish Ministers may sell any fish that are being retained by them under section 43.
- (2) Any power which a court has to order the forfeiture of any such fish may instead be exercised in relation to the proceeds of any sale of the fish under this section.
- (3) Subject to subsection (6), the proceeds of any sale under this section may be retained by the Scottish Ministers until such time as—
- (a) a court exercises any power it has to order the forfeiture of the proceeds, or
 - (b) any of the grounds of release mentioned in subsection (4) applies.
- (4) The grounds of release are—
- (a) that a procurator fiscal has decided not to take proceedings in respect of any offence in relation to which the fish were seized,
 - (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 any proceedings taken in respect of such an offence have concluded without any order for forfeiture having been made.
- (5) If any of the grounds of release mentioned in subsection (4) applies, the Scottish Ministers must, as soon as is reasonably practicable, release the proceeds of sale to any person who appears to the Scottish Ministers to have been an owner of the fish at the time of the seizure of the fish.
- (6) If the proceeds of sale are still in the Scottish Ministers' possession after the end of the period of 6 months beginning with the date on which the fish were sold, the Scottish Ministers may retain the proceeds and apply them in any manner they think fit.
- (7) The Scottish Ministers may exercise their power under subsection (6) to retain and apply the proceeds of sale only if it is not practicable at the time when the power is exercised to dispose of the proceeds by releasing them immediately to the person to whom they are required to be released.
- (8) Subject to subsection (11), any fish sold under this section must be sold at auction.
- (9) Before selling the fish, the Scottish Ministers must give the owner of the fish a reasonable opportunity to make representations as to the manner in which the fish are sold.
- (10) Subsection (11) applies if the owner of the fish requests that the fish be sold—
- (a) at a particular auction, or
 - (b) by a method of sale other than by auction.
- (11) The Scottish Ministers must comply with the request unless they consider the request to be unreasonable.
- (12) The Scottish Ministers may deduct from the proceeds of sale any reasonable expenses incurred by them in selling the fish.

- (13) Where there is more than one owner of the fish, subsection (11) applies only if the request under subsection (10) is made by or on behalf of all the owners.

45 Disposal of property retained by Scottish Ministers under section 43

- (1) This section applies to any property being retained by the Scottish Ministers under section 43 which they—
- (a) no longer wish to retain for any purpose, or
 - (b) are required to make available for collection by virtue of that section.
- (2) In this section, a “notice of collection” is a notice stating that—
- (a) the property specified in the notice is available to be collected from the location so specified, and
 - (b) if the property is not collected before the end of the period of 3 months beginning with the date specified in the notice, the Scottish Ministers will dispose of the property.
- (3) The Scottish Ministers must serve a notice of collection on every person who appears to them to be an owner of the property.
- (4) The Scottish Ministers may take any other steps they consider appropriate to notify every such person that the property is available to be collected.
- (5) If the Scottish Ministers, after taking reasonable steps to do so, are unable to identify any person as owning the property, they must—
- (a) if it is reasonably practicable to do so, serve a notice of collection on every person who is an appropriate person for the purposes of this subsection, and
 - (b) take such steps as they think fit to bring the information contained in the notice of collection to the attention of persons likely to be interested in it.
- (6) For the purposes of subsection (5) each of the following is an “appropriate person”—
- (a) in the case of property seized from a vessel, the master, owner and charterer (if any) of the vessel at the time of the seizure of the property,
 - (b) in the case of property seized from premises, every person who appears to the Scottish Ministers to have been an occupier of the premises at that time,
 - (c) in any other case, the person (if any) from whom the property was seized.
- (7) If the Scottish Ministers comply with subsection (3) or (as the case may be) (5), they may, at the end of the period mentioned in subsection (2)(b), dispose of the property in whatever way they think fit.