

SCHEDULE 1

(introduced by section 17(6))

COMMERCIALLY DAMAGING SPECIES: CONTROL SCHEMES

Making a control scheme: procedure

- 1 Where the Scottish Ministers propose to make a control scheme, they must serve on every person who carries on a business of fish farming or shellfish farming on whom the scheme proposes to impose any requirement—
 - (a) a draft of the proposed scheme, and
 - (b) a notice stating that any such person may, within 14 days of the service of the notice, object to the Scottish Ministers in such manner as may be specified in the notice to the draft control scheme or to any provision contained in it.
- 2 If no objection is duly made under paragraph 1, or if all objections so made are withdrawn, the Scottish Ministers may make the control scheme either in the form of the draft control scheme served under that paragraph or, subject to paragraph 4, with modifications.
- 3 If any objection duly made under paragraph 1 is not withdrawn, the Scottish Ministers—
 - (a) must consider the objection, and
 - (b) may make the control scheme either in the form of the draft control scheme served under that paragraph or, subject to paragraph 4, with modifications.
- 4 A control scheme may not be made with any modifications unless—
 - (a) every person served with a copy of the draft control scheme under paragraph 1 has been served with a notice of the proposal to make the modification, and
 - (b) every such person—
 - (i) has either consented to the proposal, or
 - (ii) has not, before the expiry of the period of 14 days beginning with the day of the service of the notice, notified the Scottish Ministers in writing that the person objects to it.

Variation or revocation of a control scheme: procedure

- 5 (1) The Scottish Ministers may—
 - (a) make a scheme varying a control scheme, or
 - (b) revoke a control scheme.(2) The Scottish Ministers may exercise a power under sub-paragraph (1)—
 - (a) on the application of a person who carries on a business of fish farming or shellfish farming on whom the control scheme has imposed any requirement, or
 - (b) even if no such application is made.
- 6 Before making any variation or revocation such as is mentioned in paragraph 5(1), the Scottish Ministers must serve on every person who carries on a business of fish farming or shellfish farming on whom the control scheme has imposed any requirement—
 - (a) a draft of the scheme varying the control scheme or (as the case may be) an intimation of the proposed revocation, and

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

- (b) a notice stating that any such person may, within 14 days of the service of the draft scheme or (as the case may be) the intimation, object to the Scottish Ministers in such manner as may be specified in the notice to the variation or revocation of the control scheme.
- 7 If no objection is duly made under paragraph 6, or if all objections so made are withdrawn, the Scottish Ministers may vary or revoke the control scheme (as the case may be).
- 8 If any objection duly made under paragraph 6 is not withdrawn, the Scottish Ministers —
- (a) must consider the objection, and
 - (b) may—
 - (i) make the variation, either in the form of the draft or, subject to paragraph 9, with modifications, or
 - (ii) revoke the control scheme,
 as the case may be.
- 9 A variation of a control scheme may not be made with any modification unless—
- (a) every person served with a copy of the draft scheme by virtue of paragraph 6 has been served with a notice of the proposal to make the modification, and
 - (b) every such person—
 - (i) has either consented to the proposal, or
 - (ii) has not, before the expiry of the period of 14 days beginning with day of the service of the notice, notified the Scottish Ministers in writing that the person objects to it.

Objections

- 10 Notwithstanding anything in paragraph 3 or 8, the Scottish Ministers may—
- (a) require any person who has made an objection to state in writing the grounds for it, and
 - (b) disregard the objection for the purposes of this schedule if they are satisfied that the objection is frivolous.

Making, varying or revoking a control scheme: notices

- 11 On making a control scheme, or on varying or revoking such a scheme, the Scottish Ministers must serve on every person on whom a notice was required to be served under any of the following provisions—
- (a) paragraph 1(b),
 - (b) paragraph 4(a),
 - (c) paragraph 6(b),
 - (d) paragraph 9(a),
- a notice stating that the scheme has been made or (as the case may be) that a variation or revocation of the scheme has been made.

Validity of control schemes

- 12 Subject to paragraph 13, the validity of a control scheme or of any variation or revocation of such a scheme may not at any time be questioned in any proceedings.

Appeals

- 13 (1) Any person who carries on a business of fish farming or shellfish farming at a fish farm or shellfish farm to which a control scheme relates may appeal by way of summary application to a sheriff against—
- (a) a decision of the Scottish Ministers to—
 - (i) make the control scheme,
 - (ii) make a scheme varying the control scheme, or
 - (iii) revoke the control scheme, or
 - (b) the terms or conditions of the control scheme (including such a scheme as varied).
- (2) An appeal under sub-paragraph (1) must be lodged not later than 28 days after the date on which the person making the appeal received a notice under paragraph 11.
- (3) On an appeal under sub-paragraph (1), the sheriff may—
- (a) affirm the control scheme,
 - (b) direct the Scottish Ministers to amend the scheme in such manner as the sheriff may specify,
 - (c) direct the Scottish Ministers to revoke the scheme,
 - (d) make such other order as the sheriff thinks fit.
- (4) A decision of the sheriff on an appeal under sub-paragraph (1) is final except on a point of law.
- (5) An appeal on a point of law against the decision of a sheriff under sub-paragraph (1) lies to the Court of Session only.