



# Aquaculture and Fisheries (Scotland) Act 2013

2013 asp 7

## PART 3

### SEA FISHERIES

#### *Retention and disposal of property seized by BSFOs*

#### **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.

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*Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, Section 44. (See end of Document for details)*

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- (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.

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**Commencement Information**

**II** S. 44 in force at 16.9.2013 by [S.S.I. 2013/249](#), **art. 2**

**Changes to legislation:**

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