

# **AQUACULTURE AND FISHERIES (SCOTLAND) ACT 2013**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 4 - Shellfish**

##### **Protection of shellfish waters**

##### *Section 54 - Protection and improvement of shellfish waters*

146. [Section 54](#) amends the Water Environment and Water Services (Scotland) Act 2003 (the “WEWS Act”) to make provision for the continued protection of shellfish waters following the repeal of the Shellfish Waters Directive (Directive [2006/113/EC](#)).
147. Subsection (2) inserts a new section 5A into the WEWS Act. New section 5A enables the Scottish Ministers, by order, to designate areas of coastal or transitional water as “shellfish water protected areas” where they consider it necessary or desirable to do so for the protection or development of economically significant shellfish production. The Scottish Ministers are required to review any such designations by the dates specified in subsection (3) of new section 5A. These dates are intended to allow the Scottish Ministers to coordinate the process of designating and monitoring shellfish water protected areas with the process of characterising river basin districts under section 5 of the WEWS Act. The new section 5A allows for the Scottish Ministers to identify the coastal water or transitional water to be designated by reference to a map laid before the Scottish Parliament. It also provides that the Scottish Ministers must send copies of any designation order and maps made in pursuance of new section 5A to SEPA.
148. Subsection (3) of section 54 amends section 7 (register of protected areas) of the WEWS Act so that any shellfish water protected area that Ministers have designated is a “protected area” for the purposes of that section and therefore subject to the requirement to be included on the register of protected areas for each river basin district.
149. Subsection (4) amends section 9 of the WEWS Act so that the process of setting environmental objectives for bodies of water in each river basin district, and programmes of measures to achieve those objectives, also applies to shellfish water protected areas. It also clarifies that such objectives for shellfish water protected areas be either necessary or desirable to protect or improve the area to support shellfish life and growth as well as contributing to a high quality of shellfish products fit for human consumption.
150. Subsection (5) amends section 11 of the WEWS Act to add a requirement for SEPA, where the river basin district contains shellfish water protected area, to consult the Food Standards Agency in relation to the statement, summary, and draft river basin management plan that SEPA is required to prepare under that section.

151. Subsection (6) amends section 28 of the WEWS Act to add definitions of “shellfish” and “shellfish water protected area” for the purposes of interpreting Part 1 of the WEWS Act.

## **Orders as to fisheries for shellfish**

### ***Section 55 - Power to make orders as to fisheries for shellfish***

152. For the purpose of establishing or improving, and of maintaining and regulating, shellfisheries the Scottish Ministers may make orders known as “several” and “regulating” orders under the Sea Fisheries (Shellfish) Act 1967 (“the 1967 Act”). The 1967 Act allows for orders to be made in the name of a person or body of persons (a grantee) to restrict the right of fishing in a defined area of sea to that person or body. Orders are made in respect of the species of shellfish as are described in the order and remain in force for a set period.
153. **Section 55** amends section 1(1) of the 1967 Act to allow for orders to be made for all types of shellfish including those not already listed in subsection (1) of that section and removes the present requirement for regulations to be made each time the Scottish Ministers wish to add a new type of shellfish to the list. The amendment brings the legislation into line in Scotland with that already in place in England and Wales.
154. As a consequence of amending section 1(1), section 15(2) of the Sea Fisheries Act 1968 is repealed.

### ***Section 56 - Contravention of regulated fishery orders***

155. **Sections 56** and **57** make amendments to the 1967 Act in respect of provisions for regulating fisheries for shellfish. Regulating orders may be granted under the 1967 Act for the regulation and maintenance of fishing for shellfish. Section 3 of the 1967 Act makes provision for the effect of such orders whilst sections 4A to 4D of that Act make provision for enforcement.
156. **Section 56** amends the 1967 Act by inserting new subsections (4A), (4B) and (4C) to section 3 (effect of grant of right of regulating a fishery). Where an order under section 1 of the 1967 Act confers the right of a regulated fishery and makes regulations relating to the dredging, fishing for and taking of shellfish, new subsection (4B) provides that a person commits an offence where the facts at paragraphs (a) to (c) are proved and it is reasonable to infer from those facts that the person intended to fish in contravention of regulations introduced through an order made under section 1 of the 1967 Act.
157. **Section 56(3)** further amends the 1967 Act by adding section 3A. This creates a presumption that applies in proceedings against a person charged with an offence under section 3(3) of the 1967 Act. The presumption is that a person has fished in contravention of an order made under section 1 of the 1967 Act where certain facts, set out at subsection (2)(a) of new section 3A, are proved and it is reasonable to infer from those facts that the person intended to fish in contravention of the regulations or restrictions. New section 3A(4) of the 1967 Act provides that the presumption does not apply where any evidence raises a doubt regarding certain facts.

### ***Section 57 - Enforcement of orders: powers of entry***

158. **Section 57** also makes amendments to the 1967 Act. Section 57(2) adds a new section 4CA to the 1967 Act which provides a power of entry exercisable by BSFOs in relation to any land other than a dwellinghouse. New section 4CA(1) provides that BSFOs may do certain things that are necessary to gain entry in relation to any land. This includes opening lockfast places, and removing any obstacles. New section 4CA(2) makes provisions for BSFOs to enter land on foot or with a vehicle and take any necessary person or equipment with them. New section 4CA(4) places a duty on BSFOs that, if requested, they must produce evidence of their identity.

159. **Section 57(3)** amends section 4D of the 1967 Act to make provision so that a constable may arrest without warrant someone suspected of failing to comply with a requirement imposed by a BSFO under section 4CA(1), or obstructing a BSFO from exercising the new power of entry.

**Crown application: Scotland**

160. **Section 57(5)** adds a new section 24A to the 1967 Act which relates to the application of the new section 4CA to the Crown. New section 24A(1) applies the new power of entry in section 4CA to Crown land. Most of the foreshore around Scotland is owned by the Crown. By virtue of the definition of Crown land in new section 24A(5), Her Majesty's private estates are exempt from the new power of entry in section 4CA and new section 24A(3) exempts the Crown from any criminal liability.

***Section 58 - Power to appoint inspectors before making orders as to fisheries for shellfish***

161. **Section 58** amends paragraph 4(2) of Schedule 1 to the 1967 Act to clarify the Scottish Ministers' discretionary power in making decisions on the appointment of an inspector and calling public inquires by removing the requirement to appoint an inspector in cases where an objection raising a material concern is received. The amendment brings the legislation into line with that in England and Wales.
162. This section also replaces "as soon as conveniently may be" in paragraph 4(2) of Schedule 1 with "as soon as reasonably practicable" and in paragraph 6(1) of Schedule 1 replaces "conveniently may be" with "reasonably practicable". These amendments modify the language in each case and make no change to the substance of the provisions.