

AQUACULTURE AND FISHERIES (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Part 2: *Gyrodactylus Salaris*: Containment and Treatment

Containment and treatment: additional powers

Section 15 – Creation of barriers to movement of fish, treatment of waters with chemical agents etc.

38. Section 15 inserts two new sections into the 1937 Act, conferring additional powers for the containment and eradication of the parasite *Gyrodactylus salaris*.
39. Inserted section 5A of the 1937 Act makes provision for the creation of barriers to the movement of fish. Subsection (1) of section 5A provides that the Scottish Ministers may arrange for the creation of barriers to the movement of fish in any inland waters (as defined in section 2ZB(6) of that Act) for the purposes of preventing the spread of the parasite *Gyrodactylus salaris* or of facilitating treatment with chemical agents with a view to eradicating the parasite from the waters concerned. The term ‘creation of barriers’ includes the closure or alteration of any means for the passage of salmon through, round or over dams, lades or water wheels. A barrier can prevent the spread of the parasite into waters lying upstream of the barrier by preventing the upstream migration of fish of species which might act as hosts for the parasite. In the case of chemical treatment (authorised by section 5B of the 1937 Act, which is also inserted by this section of the Act), the creation of a barrier would enable chemical treatment to be administered to a restricted part of a watercourse rather than having to be applied to the whole watercourse, the area downstream of a barrier being treated with chemical agents.
40. Subsection (2) of inserted section 5A of the 1937 Act provides that the power to arrange for the creation of barriers shall include power to maintain, dismantle and remove the barriers, and subsection (3) provides that the Scottish Ministers may purchase land compulsorily for the purpose of enabling them to create barriers. Compulsory purchase would follow the standard procedure set out in Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947. Paragraph 2 of the schedule to the Act amends section 1(1) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to provide for the application of schedule 1 of that Act to acquisitions under section 5A(3) of the 1937 Act.
41. Inserted section 5B of the 1937 Act provides for the Scottish Ministers to arrange for the treatment with chemical agents of any waters which have been designated by an order under section 2 of that Act (Power to designate areas) in relation to *Gyrodactylus salaris* with a view to eradicating the parasite. The power would be exercised only after consultation aimed at those who might be affected by the chemical treatment of the waters concerned, and after having obtained all necessary statutory permissions (for

instance under the Water Environment (Controlled Activities) (Scotland) Regulations 2005).

Section 16 – Clearance of certain fish farms

42. This section inserts two new sections into the 1937 Act, immediately after section 5B (as inserted by section 15 of the Act).
43. Inserted section 5C gives the Scottish Ministers power to serve a notice upon the operator of a fish farm situated in waters which have been designated under section 2 of the 1937 Act in relation to *Gyrodactylus salaris*. Such a notice may impose any of the requirements listed in subsection (3), namely: the withdrawal of all fish from the farm; draining and disinfection of pools and cages; destruction of dead fish, fish showing signs of gyrodactylosis caused by the parasite *Gyrodactylus salaris* and fish showing signs of the presence of the parasite; the cleaning and disinfection or destruction of equipment, material or substances liable to be contaminated with the parasite *Gyrodactylus salaris*; and requiring that the farm not be repopulated with fish until a further notice has been served to this effect. A person who intentionally contravenes any requirement of a notice under section 5C(1) is guilty of an offence, punishable on summary conviction by a fine not exceeding level 4 on the standard scale (the level of penalty is set by section 8(1) of the 1937 Act; level 4 is currently equivalent to £2,500).
44. Inserted section 5D provides that where a person fails to comply with any requirement of a notice under section 5C, an inspector may enter the fish farm to which the notice relates and take such steps as the inspector considers necessary to ensure compliance with the requirement or to remedy the consequences of a failure to comply, and allows for the Scottish Ministers to recover the inspector's reasonable costs from the person upon whom the notice was served.

Section 17 – Gyrodactylus salaris: Scottish Ministers' powers to take other measures

45. Section 17 inserts new section 5E into the 1937 Act, immediately after section 5D (inserted by section 16 of the Act). Section 5E(1) gives the Scottish Ministers power to take such other measures as they consider appropriate for the purpose of eradicating *Gyrodactylus salaris* or of preventing or limiting its spread in inland waters in Scotland or in marine waters adjacent to Scotland (which terms have the same meaning as in section 2ZB(6) of the 1937 Act, inserted by section 14 of the Act).

Section 18 – Gyrodactylus salaris: Scottish Ministers' power to make payments

46. Section 18 inserts new section 5F into the 1937 Act, immediately after section 5E (as inserted by section 17 of the Act). Section 5F gives the Scottish Ministers power to make payments in consequence of the exercise of their powers under new sections 5A, 5B, 5C or 5E of the 1937 Act, in accordance with schemes made by them by order, and in relation to such matters as may be specified by order. The section would enable schemes to be made for the payment of compensation to those affected by the exercise of certain of the Scottish Ministers' powers in relation to *Gyrodactylus salaris*. Payments in respect of fish which have been destroyed in the exercise of the Scottish Ministers' powers under the new sections referred to above are excluded by subsection (2), as provision for payments in respect of fish destroyed is made in section 29 of the Act. Any orders which the Scottish Ministers propose to make under section 5F(1) will require to be laid before the Scottish Parliament in draft, and approved by a resolution of the Parliament before they can be made and come into force (section 5F(5)).