

# **AQUACULTURE AND FISHERIES (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 2: *Gyrodactylus Salaris*: Containment and Treatment**

30. This Part of the Act makes provision in relation to the containment and treatment of *Gyrodactylus salaris* should this parasite of salmon be introduced into Scotland.

#### **Order under section 2 of the 1937 Act: additional powers**

##### ***Section 13 – Order under section 2 of the 1937 Act: additional powers***

31. Section 13 inserts section 2ZA into the 1937 Act. Section 2 (Power to designate areas) of the 1937 Act enables Ministers, where they have reasonable grounds for suspecting that certain waters are or may become “infected waters” (as that term is defined in section 10 (Interpretation) of the 1937 Act) to make an order designating those waters and such adjacent land as Ministers consider appropriate. Such an area is known in section 2 of the 1937 Act as a “designated area”. Under section 2 of the 1937 Act, in respect of a designated area Ministers may prohibit or regulate the taking into or out of the designated area of live fish and live fish eggs and foodstuff of fish and regulate movement of those things within the designated area. New section 2ZA provides additional powers where Ministers designate an area under section 2 of the 1937 Act where they suspect that the waters are or may become infected waters by reason of the presence of the parasite *Gyrodactylus salaris*.
32. These additional powers include prohibiting the taking into or out of the designated area by any person, other than an inspector or other person exercising functions by arrangement with the Scottish Ministers in relation to the 1937 Act, of any vehicle, or description of vehicle, and such equipment, material or substance not falling within section 2(2)(a) of the 1937 Act (i.e. live fish, live eggs of fish and foodstuff of fish) as may be specified in the order designating the area, unless the vehicle, equipment, material or substance concerned is subjected to a specified process of disinfection immediately before being taken in to or, as the case may be, out of the designated area (new section 2ZA(a)). These additional powers also include prohibiting or regulating the taking into or out of the designated area of dead fish (section 2ZA(b)) and regulating entry to and exit from the designated area (section 2ZA(c)).

#### **Preliminary designation of area by order**

##### ***Section 14 – Preliminary designation of area by order***

33. Section 2 of the 1937 Act permits an order to be made only in relation to waters which the Scottish Ministers have reasonable grounds for suspecting are, or may become, infected waters. Section 14 inserts section 2ZB into the 1937 Act immediately after section 2ZA (inserted by section 13 of the Act). Section 2ZB(1) provides that if at any

time the Scottish Ministers have reasonable grounds for suspecting that any of the inland waters of, or marine waters adjacent to, the United Kingdom (the terms “inland waters” and “marine water adjacent to the United Kingdom” are defined for the purposes of section 2ZB(1) in section 2ZB(6)) are “infected waters” (as that term is defined in section 10 of the 1937 Act) by reason of the presence of the parasite *Gyrodactylus salaris*, they may by order made by statutory instrument designate such part, or all, of the inland waters of Scotland and the marine waters adjacent to Scotland (as defined by section 2ZB(6)) as they consider appropriate. The power is triggered where the Scottish Ministers have reasonable grounds for suspecting that any of the marine or inland waters of the United Kingdom are “infected waters” by reason of the presence of the parasite *Gyrodactylus salaris*, and does not require that they have grounds to believe that the particular Scottish waters to be designated are at specific risk of infection. The purpose of a designation under section 2ZB(1) is to impose temporary measures to limit the spread of infection while the scale of any outbreak, and thus the need for designations under section 2 of the 1937 Act, can be assessed. So, were the Scottish Ministers to learn of a suspected outbreak of *Gyrodactylus salaris* in waters in England, for example, they would be able to use section 2ZB(1) to impose restrictions upon Scottish waters while the scale of the outbreak was investigated.

34. Section 2ZB(2) provides that an order under section 2ZB(1) designating an area may also prohibit or regulate the taking into or out of the area designated such live fish, live fish eggs and foodstuff of fish (or such description of those things) as may be specified in the order and regulate the movement within the area designated of such of those things (or description of things) as may be specified in the order until the expiry of the period of thirty days from the day the order was made.
35. Section 2ZB(3) provides for the making of a further order, before the expiry of the thirty day period relating to an order under section 2ZB(1), extending the effect of the first order for a further period of thirty days from the day upon which it would otherwise have ceased to have effect.
36. Section 2ZB(4) provides that such orders, whether made under section 2ZB(1) or (3) are to be made by statutory instrument which is to be laid before the Scottish Parliament.
37. Section 2ZB(5) makes it an offence for any person to intentionally contravene any provision of an order made under either section 2ZB(1) or (3).

### **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,

*These notes relate to the Aquaculture and Fisheries (Scotland)  
Act 2007 (asp 12) which received Royal Assent on 5th April 2007*

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)).