

AQUACULTURE AND FISHERIES (SCOTLAND) ACT 2013

EXPLANATORY NOTES

THE ACT

Part 1 Aquaculture

Chapter 1 – Fish Farm Management

Section 1 - Fish farm management agreements and statements

3. [Section 1](#) makes provision to amend the Aquaculture and Fisheries (Scotland) Act 2007 (the “2007 Act”) with the insertion of provisions for fish farm management agreements and statements.
4. [Section 1\(2\)](#) inserts a new section (4A) into the 2007 Act, after section 4. This provision sets out the requirement for fish farm businesses to be party to farm management agreements or to maintain farm management statements. The amendment will enhance the investigative powers currently available to an inspector (within the meaning of section 12 of the 2007 Act) and provide inspectors with additional powers to take samples of fish and examine/take copies of any documents or records from any fish farm in Scotland. It will also enable the Scottish Ministers to modify the definition of the Code of Practice (within the meaning of inserted section 4A(5)) by order.
5. [Section 1\(3\)](#) replaces section 6(1) (enforcement notices) of the 2007 Act. This amendment will enable Scottish Ministers to serve enforcement notices on those who have failed or are failing to be party to fish farm management agreements or to maintain fish farm management statements and on those who have failed or are failing to ensure fish farms are managed and operated in accordance with such agreements or statements.
6. [Section 1\(4\)](#) amends section 43(3) of the 2007 Act so that an order under section 4A(6) of the 2007 Act is subject to the affirmative procedure in the Scottish Parliament.

Section 2 - Escapes, and obtaining samples, from fish farms

7. [Section 2](#) makes provision to amend the 2007 Act to enhance the investigation powers currently available to inspectors and to provide inspectors with additional powers to take or require samples of fish from any fish farm in Scotland. The amendments will allow the Scottish Ministers to determine from which farms fish have escaped. The information obtained as a result of the exercise of the new investigation powers will assist to inform fish farmers on best containment practices, prevention of escapes, improving productivity, increasing sustainability and minimising the potential for adverse impact on wild salmonids.
8. [Section 2\(2\)\(a\)](#) inserts a new paragraph (ba) into subsection (2) of section 5 of the 2007 Act (inspections: containment and escape of fish). The provision will enable an inspector (within the meaning of section 12 of the 2007 Act) to carry out an inspection

for the purpose of tracing the origin of any fish known or suspected to have escaped from an inspected farm or any other fish farm.

9. [Section 2\(2\)\(b\)](#) amends section 5(3)(a) of the 2007 Act to clarify that the powers available to an inspector under that section include powers to take samples of fish or material from fish.
10. [Section 2\(3\)](#) inserts a new section 5A into the 2007 Act. New section 5A(1) enables an inspector to take samples of fish or material from fish, on a fish farm for a purpose mentioned in new section 5A(3). Section 5A(2) enables an inspector to require persons who carry on the business of fish farming to provide them with samples of fish, or material from fish, on the fish farm.
11. Section 5A(3) of the 2007 Act specifies the purposes for which the samples referred to in section 5A(1) and (2) may be taken, including assessing the impact of a fish farm's operations on the environment and for research purposes.

Chapter 2 – Fish Farming: Equipment and Wellboats

Equipment

Section 3 - Technical requirements for equipment used in fish farming

12. [Section 3](#) makes provision for regulations to be made by the Scottish Ministers in relation to technical requirements for equipment to be used for or in connection with fish farming. The regulations will assist fish farmers to contain fish, prevent escapes, improve productivity, increase sustainability, and minimise the potential for any significant adverse impact on wild salmonids.
13. [Section 3\(1\)](#) enables the Scottish Ministers to make regulations which will prescribe equipment requirements to be complied with by fish farmers in their farming activities, and to provide for the enforcement of those requirements. Section 3(1)(b) includes training requirements in the matters to be regulated.
14. [Section 3\(2\)](#) specifies the purposes for which the regulations may be made, including for the prevention of escapes of fish.
15. [Section 3\(3\)](#) makes provision for the matters which may be included in the regulations, including arrangements for the appointment of inspectors to enforce the provisions of the regulations (section 3(3)(b)) and for criminal offences associated with non-compliance with the regulations (section 3(3)(g)). Section 3(7) provides that the sanctions that may be specified in the regulations may include the suspension or revocation of any authorisations required by fish farm operators to operate as such, for example, an authorisation under the [Aquatic Animal Health \(Scotland\) Regulations 2009 \(SSI 2009/85\)](#).

Wellboats

Section 5 - Control and monitoring of operations of wellboats

16. [Section 4](#) defines “wellboat” for the purposes of Chapter 2 in Part 1 of the Act, and “farmed fish” for the purposes of section 4. Section 4(1), as read with section 4(2) and (3), defines “wellboat” as meaning a vessel containing a tank or well for holding water in which live farmed fish may be taken and subsequently kept for transportation, storage, slaughter, grading or treatment.

Section 5 - Control and monitoring of operations of wellboats

17. [Section 5\(1\)](#) enables the Scottish Ministers to make provision, in regulations, for or about controlling and monitoring the operation of any wellboat in Scotland. Section 5(2) contains provisions detailing the matters which may be provided for in regulations

under section 5(1), including the measures that require to be taken to control the risk of the spread of parasites, etc as a result of wellboat operations and the specification of types of equipment that require to be installed in wellboats. Section 5(3) enables regulations under section 5(1) to impose requirements on the master, owner or charterer of a wellboat, as the case may be. Section 5(5) makes it an offence, punishable on summary conviction by a fine of up to level 4 on the standard scale (section 5(8)), for a person to contravene any of the provisions of section 5(1) regulations, or fails to take any action required of them under those regulations. In cases where a section 6 enforcement notice has been served upon a person charged with an offence under section 5(5), section 5(6) prevents proceedings being taken against that person. Section 5(7) creates a reasonable excuse defence for persons charged with an offence under section 5(5). For example, the master of a wellboat may temporarily be unable to comply with requirements under the regulations on equipment where there has been an unforeseen and unpreventable delay in installation, or where installed equipment intended to reduce the spread of parasites is under repair.

Section 6 - Enforcement notices

18. **Section 6** makes provision for the service of enforcement notices in relation to failure to comply with the requirements of regulations made under section 5(1).
19. Where the Scottish Ministers are satisfied a person has failed or is failing to comply with any requirements imposed upon that person in regulations made under section 5, they may serve an enforcement notice upon that person. That notice must specify the matters referred to in section 6(3), and Ministers may decide to publish its service (section 6(4)). Where an enforcement notice has been served by the Scottish Ministers, the person upon whom it has been served may appeal against the notice to the sheriff within seven days of the service of the notice (section 6(5)). Section 6(7) provides that the lodging of a timeous appeal stops the effect of the notice, until such time as the appeal is withdrawn or determined.
20. **Section 6(8)** provides that upon hearing an appeal, the sheriff may make such order as he or she considers appropriate as regards the notice, and the sheriff's decision in the matter is final. Where an appeal is not upheld (i.e. is unsuccessful), section 6(9) provides that the sheriff may specify a date by which the action specified in the enforcement notice must be undertaken. For example, an appeal is made in respect of an enforcement notice which specifies 24 April 2015 as the date by which specified works require to be completed. The appeal is not upheld, and the sheriff specifies 26 May 2016 as the new completion date. The latter date prevails, and the specified works will require to be completed by 26 May 2016.
21. It is an offence, punishable upon summary conviction by a fine of up to Level 4 on the standard scale, for a person upon whom an enforcement notice has been served to fail to comply with the requirements of a notice - section 6(10) and (12). Section 6(11) makes provision for a reasonable excuse defence for persons charged with an offence under section 6(10).

Section 7 - Marine enforcement officers' functions

22. **Section 7** contains provisions in relation to the enforcement of regulations made under section 5(1) and enforcement notices served under section 6.
23. **Section 7(1)** enables marine enforcement officers (MEO), as defined by section 63 to exercise the powers available in Part 7 and section 150 of the Marine (Scotland) Act 2010, for the purpose of enforcing regulations made under section 5(1). Section 7(2) authorises such officers to take any action the officer considers necessary in order to fulfil the requirements of an enforcement notice served by the Scottish Ministers under section 6. Section 7(6) enables the Scottish Ministers to recover any costs incurred by the marine enforcement officer in pursuance of the provisions of section 7(2).

24. [Section 7\(3\)\(a\)](#) modifies the effect of sections 151 to 155 of the Marine (Scotland) Act 2010 such that references in those sections to the powers conferred by Part 7 of the 2010 Act are to be read as including a reference to those powers as applied by section 7(1) (to enforce section 5 regulations) and as conferred by section 7(2) (to take action to meet the requirements of an enforcement notice under section 6). For example, in practice this means that, where a MEO wishes to exercise search or examination powers available under Part 7 of the 2010 Act in order to determine whether a person has complied with regulations under section 5, the officer may be required by the person to produce evidence of the officer's authorisation to exercise the power in question (section 151 of the 2010 Act).
25. [Section 7\(3\)\(b\)](#) makes equivalent provision as regards references to the functions of a marine enforcement officer. Sections 151 to 155 of the Marine (Scotland) Act 2010 are modified such that references in those sections to the functions under the 2010 Act of MEOs are to be read as including a reference to those functions as applied by section 7(1) (to enforce section 5 regulations) and as conferred by section 7(2) (to take action to meet the requirements of an enforcement notice under section 6). For example, in practice this means that a MEO who takes action to fulfil the requirements of an enforcement notice issued under section 6 is not liable in civil or criminal proceedings for anything the officer did as regards that action (section 154 of the 2010 Act).
26. [Section 7\(4\)](#) makes provision in relation to the geographical limits of a MEO's powers, specifying that those powers are exercisable in the Scottish marine area (as defined in section 1 of the 2010 Act) and any other part of Scotland. Section 7(7) contains a definition for the purposes of this section.

Section 8 - Power to detain well boats in connection with court proceedings

27. [Section 8](#) provides an enforcement power for MEOs to detain wellboats in connection with court proceedings.
28. [Section 8\(2\)](#) provides that an MEO may take, or may arrange for others to take, a wellboat and its crew to the nearest convenient port for the purposes of detaining it. It allows an MEO to give instructions to anyone who appears to be in charge of the vessel to take it and its crew, to port.
29. [Section 8\(4\)](#) and [\(5\)](#) requires an MEO to serve a notice of detention on the person who appears to be in charge of the wellboat, which must include the reasons for detaining it and the circumstances under which it may be released. A notice of detention under section 9(4) must be withdrawn if any ground of release specified in section 9(5).

Section 9 - Release of wellboat detained under [section 8](#)

30. [Section 9\(2\)](#) sets out the circumstances under which a wellboat detained under section 8 is no longer to be treated as detained under that section. This includes where a notice of detention is withdrawn by an MEO, where a sheriff orders the release of the vessel under section 10, proceedings taken against the master, owner, or charterer have concluded, or the court has exercised any power it has to order the wellboat to be detained.

Section 10 - Power of sheriff to order release of wellboats

31. [Section 10](#) provides a process allowing the owners of a wellboat detained under section 8 to apply to a sheriff for an order releasing the vessel from detention. A master, an owner or charterer of a wellboat may apply under section 10(2) to a sheriff seeking the release of the wellboat from detention. A sheriff may order the release of the vessel if satisfied that any of the grounds given in section 10(4) apply. These are that the continued detention of the wellboat is no longer necessary to secure the attendance of the master, owner, or charterer at court, or that there are no grounds for believing that the court would order the wellboat to be detained at any court proceedings as envisaged under section 8(1)(b)(ii).

Chapter 3 – Commercially Damaging Species

Orders relating to commercially damaging species

Section 11 - Specification of commercially damaging species

32. Section 11(1), as read with subsection (2), provides for the species which the Scottish Ministers may, by order, specify as a commercially damaging species for the purposes of Chapter 3. Section 11(1) defines a commercially damaging species as a species of fish or shellfish, plant, or any other species of animal. It enables Ministers to make an order in respect of such species where they consider the species, if not controlled, would be likely to have a significant adverse impact on the economic or commercial interest of a person who carries on a business of fish farming, and where the species itself of little or no commercial value. For example, the order-making power may be exercised in relation to *Mytilus trossulus*. This species of mussel, which is not commercially viable due to its thin shell and low meat yield, has displaced in some places the commercially viable farming of *Mytilus edulis*.

Section 12 - Movement of species, etc.

33. Section 12(1), as read with section 13 (orders under section 12(1): samples and surveillance), enables the Scottish Ministers to make provision, by order, for or about the prohibition or control of the movement of any commercially damaging species that is present, or suspected of being present in any body of water. The power extends to any other species of animal or plant and any equipment, used in connection with fish farming or shellfish farming, the movement of which may be associated with the movement of the commercially damaging species. It also extends to water in which a commercially damaging species is suspected of being present.
34. Section 12(2) details the matters that may be included in an order under section 12(1), including the designation of an area in which movement controls apply. For example, this power may be exercised to prevent the movement of stocks from a site known or suspected of having a commercially damaging species. It is an offence for a person to act in contravention of a section 12(1) order, to fail to take any action required by the order or to otherwise fail to comply with any requirement imposed on the person by such an order (section 12(3)). Offences under section 12(3) are punishable on summary conviction by a fine not exceeding level 5 on the standard scale (section 12(5)).

Section 13 - Orders under section 12(1): samples and surveillance

35. Section 13 specifies the matters which may be provided for in an order under section 12(1). An order may contain provision which enables an “appointed person” to take samples of fish, shellfish, or material from any fish or shellfish farm and analyse these for the purpose of ascertaining whether a commercially damaging species is present at a fish or shellfish farm. Section 13(1)(d) describes the powers of an “appointed person”, including powers to enter any land, fish farms, shellfish farms or premises associated with the management or operation of such farms and to require the operator of such farms to provide samples. For example, an appointed person may enter onto a fish farm in order to collect samples of mussels to determine whether they are *Mytilus trossulus* or *Mytilus edulis*.
36. Section 13(3) contains further provision on the matters that may be provided for in an order under section 12(1), including requiring persons to undertake surveillance programmes or for appointed persons to undertake such action.

Section 14 - Offences relating to persons appointed under section 13

37. Section 14(1) specifies the circumstances in which a person commits an offence as regards an appointed person. It is an offence for a person to fail to comply with a requirement imposed by an appointed person or to wilfully obstruct such a person. For

example, where a person wilfully obstructs a person appointed by the Scottish Ministers for the purposes of undertaking a programme of surveillance (section 13(3)(b)), the person so obstructing is guilty of an offence.

38. Persons guilty of an offence under section 14(1)(a) are liable on summary conviction to a fine not exceeding level 5 of the standard scale, (currently £10,000), and persons guilty of an offence under section 14(1)(b) are liable on summary conviction to a fine not exceeding the statutory maximum (currently £10,000) and on conviction on indictment to a fine (section 14(4)).

Section 15 - Notification of presence of commercially damaging species

39. **Section 15(1)** creates an obligation for operators of fish farms and shellfish farms, as soon as reasonably practicable, to notify the Scottish Ministers of the presence of a commercially damaging species on the fish farm or shellfish farm. In terms of section 15(2), the notification obligation also applies to any person who is employed, or acts as an agent as regards the fish farm or shellfish farm.
40. **Section 15(3)** specifies the details that must be included in any notification, including the type of the commercially damaging species, and details of the fish or shellfish farm in question. It is an offence, punishable on summary conviction to a fine not exceeding level 5 on the standard scale, for a person to fail to give a notification (section 15(4) and (6)).

Control

Section 16 - Control agreements

41. **Section 16** applies where the Scottish Ministers are satisfied that a commercially damaging species is present on a fish farm or shellfish farm. Section 16(2) requires that Scottish Ministers form a preliminary view as to whether measures should be taken to remove the species, to reduce the incidence of the species, to prevent its spread or to control it, and if so, by what means. For example, where a commercially damaging species is found to be present, Ministers may take a preliminary view that the site may be fallowed to control the presence of a commercially damaging species.
42. Where it is decided that measures should be taken, section 16(3) requires the Scottish Ministers to give notice to the person who carries on the business of fish farming or shellfish farming at the farm in question, and to consult that person in order to secure their agreement on the measures to be taken, etc. When agreement under 16(3) is reached, the Scottish Minister must prepare a “control agreement”, and section 16(4) specifies the matters that must be contained in such an agreement. Section 16(6) requires the Scottish Minister to send a copy of the control agreement to the person carrying on the business of fish or shellfish farming at the farm in question and section 16(8) makes provision for the control agreement to be reviewed at least once in every 18 months.

Section 17 - Control schemes

43. **Section 17** applies where Scottish Ministers have given notice under section 16(3)(a) of the Act in relation to the presence of a commercially damaging species, and are satisfied either that it is not possible to secure a control agreement, or 6 weeks have elapsed since the notice and no agreement has been reached and Ministers remain of the view that measures should be taken to remove, reduce, prevent or otherwise control the commercially damaging species.
44. **Section 17(2)** requires in certain circumstances the Scottish Ministers to make a “control scheme” in order to ensure that any measures they consider necessary to remove, etc the species in question are taken. Where Ministers make a control scheme, they must notify the person who carries on the business to which the control scheme relates at least 14 days before the scheme comes into effect that the scheme has been made (section 17(3)).

Section 17(4) and (5) specify, respectively, the matters which must and may be included in the control scheme, and the date by which any measures to be taken by the person to whom the scheme applies are to be completed. Section 17(6) introduces schedule 1, which makes provision about the making, variation and revocation of control schemes and appeals. Section 17(7) makes provision for the person who carries on a business to which a control scheme relates to take such measures as the scheme may require of them. Section 17(8) requires the Scottish Ministers to review a control scheme at least once every 12 months, and section 17(9) enables Ministers to undertake themselves any requirement of a control scheme where they are of the opinion that a person has failed to comply.

Section 18 - Emergency action notices

45. **Section 18** applies where the Scottish Ministers are satisfied that a commercially damaging species is present on a fish farm or shellfish farm and that unless urgent action is taken, the species will spread quickly and have an immediate and significant adverse impact on other fish or shellfish or their commercial exploitability or the commercial or economic interests of fish or shellfish farmers. Where Ministers are so satisfied, section 18(2) provides an exemption to the notice process described in section 16(3), such that no notice or consultation to secure an agreement need be carried out. Instead, section 18(3) requires the Scottish Ministers to give an “emergency action notice” which notes their intention to take urgent action in respect of the commercially damaging species. Section 18(4) specifies the matters to be included in an emergency action notice, including the measures proposed to be taken to remove the species from the farm in question. Section 18(5) enables Ministers, no sooner than 14 days after the giving of the notice, to take the measures specified in the emergency action notice.

Section 19 - Appeals in connection with emergency action notices

46. **Section 19** creates a statutory right for persons upon whom an emergency action notice has been served to appeal against the notice to a sheriff against the decision to give the notice or its terms. An appeal must be lodged within 14 days of the emergency action notice being given (section 19(2)). Section 19(3) states the sheriff may make any order on appeal he or she thinks appropriate and that the sheriff’s decision is final.

Powers

Section 20 - Power to enter fish farms, shellfish farms, etc

47. **Section 20** enables persons authorised in writing by the Scottish Ministers, and for a purpose stated in section 20(2), to enter any fish farm or shellfish farm and any premises associated with the management or operation of a fish farm or shellfish farm. Section 20(2) sets out the purposes for which the Scottish Ministers may authorise a person to enter such premises, including in order to obtain information that will enable them to determine whether a commercially damaging species is present on a fish or shellfish farm. Section 20(3) states that the power of entry must be exercised at a reasonable hour, except in the circumstances described in section 20(3)(a), (b) or (c). Section 20(4) provides that where a person proposes to exercise powers of entry, they must if so required, produce evidence of their identity and authorisation.

Offences

Section 21- Offences in relation to control agreements, control schemes, etc.

48. **Section 21** makes provision in relation to offences. Section 21(1) makes it an offence, without reasonable excuse, for a person to refuse or fail to comply with any requirement imposed on the person by a control agreement (section 16) or a control scheme (section 17). Section 21(2) makes it an offence for a person to wilfully obstruct a person authorised under section 20(1) from carrying out any of their functions under section 20.

49. [Section 21\(4\)](#) provides that a person who commits an offence under section 21(1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, and section 21(5) provides that a person who commits an offence under section 21(2) is liable on summary conviction to a fine not exceeding the statutory maximum (currently £10,000), and on conviction on indictment, to a fine.

Interpretation

Section 22 - Interpretation of Chapter 3

50. [Section 22](#) provides a definition of ‘commercially damaging species’ as used in Chapter 3.

Chapter 4 – Planning Permission

Planning permission for marine fish farms

51. [Section 23](#) amends section 31A of the Town and Country Planning (Scotland) Act 1997 by inserting new subsections (2A), (4A) and (4B) and amending subsection (8).
52. Inserted subsection (2A) enables Scottish Ministers to grant planning permission for the operation of an individual marine fish farm either by order or on an application to them. Inserted subsections (4A) and (4B) ensure that farms for which planning permission had been granted by order are not disadvantaged should the order be revoked before the “appropriate date”. The “appropriate date” is the date after which planning permission is required for the operation of certain marine fish farms and is the later of 31 March 2014 or the date of expiry of the consent in place on 1 April 2007 (under which the fish farm is authorised to operate). The effect is that planning permission will not be required for the farm as a consequence of previous grant of planning permission by the order being revoked until the appropriate date for the fish farm.
53. [Section 23\(4\)](#) amends subsection (8) of section 31A of the 1997 Act to remove the requirement for regulations to specify in which cases applications must be made.