

AQUACULTURE AND FISHERIES (SCOTLAND) ACT 2013

EXPLANATORY NOTES

THE ACT

Part Five - Miscellaneous

Charging

Section 59 - Power to charge in connection with fisheries functions

163. **Section 59(1)** confers a power on Scottish Ministers enabling them to make regulations for or about the imposition of charges in connection with the carrying out of certain fishery functions specified by them in those regulations.
164. **Section 59(2)** as read with subsection (1), defines the functions in relation to which the Scottish Ministers may impose a charge. These are functions under legislation relating to fish and shellfish farming, salmon and freshwater fisheries and sea fishing. Section 59(8) provides that the term "legislation", means any enactment or EU instrument which contains an enforceable EU obligation or restriction.
165. The "fisheries functions" also includes functions of any person appointed by the Scottish Ministers under that legislation to ensure compliance with that legislation (such as an inspector or British sea fishery officer).
166. **Section 59(3)** lists examples of provisions that may be made in any regulations with respect to the payment of charges. These include: provision about the determination of the amount of charge payable, including circumstances where the charge is reduced, waived or need not be paid; the circumstances in which a charge is payable including making the carrying out of specified fisheries functions conditional on payment of a charge, and provision for the recovery and collection of charges; the timing of payment of charges, including provision for annual and recurring charges; and provision setting out by whom a charge is payable. The regulations may also contain provisions about how disputes about the amount or liability for a charge may be determined.
167. **Section 59(6)** also clarifies that regulations under subsection (1) may make different provision for different purposes, which include for different types of fisheries function, different types of person or persons (by whom charges are paid) and with respect to different areas.
168. **Section 59(4)** clarifies the nature of the charges which may be set out in the regulations. There are two parts to this provision. Firstly such regulations may only require persons to pay a charge if and only so far as that person is someone in relation to whom a specified fisheries function has been carried out. Secondly the charge set out in regulations must not in any particular case exceed the cost incurred in the carrying out of that function, in that case. The charges are therefore limited to being a form of cost recovery for the performance of specified statutory functions.

*These notes relate to the Aquaculture and Fisheries (Scotland)
Act 2013 (asp 7) which received Royal Assent on 18 June 2013*

169. [Section 59\(5\)](#) requires Scottish Ministers to consult those people they consider appropriate before making (or amending) regulations under subsection (1).
170. [Section 59\(7\)](#) clarifies that existing powers to charge remain available to the Scottish Ministers and will not be affected by the introduction of the new provisions.