

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.

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.

Fixed Penalty Notices

Section 60 - Fixed penalty notices

171. A fixed penalty notice is a form of sanction that may be offered in certain circumstances as an alternative to seeking a criminal conviction in court. Where a fixed penalty is accepted and paid within a deadline the matter is concluded. The issuing or payment of a fixed penalty is not recorded as a criminal conviction nor can it be treated as such.
172. An alleged offender has the choice of not accepting the fixed penalty by simply not paying the penalty by the deadline set. In these circumstances the matter is thereafter reported to the procurator fiscal and is dealt with in the criminal courts. Marine Scotland currently offers fixed penalty notices for sea fisheries related offences under the provisions of section 25 of the 2007 Act.
173. Section 60(2) amends section 25(2) of the 2007 Act to change the reference to British sea-fishery officer to fixed penalty officer. Fixed penalty officers are persons appointed by the Scottish Ministers and are defined in section 25(3) of the 2007 Act through an amendment introduced through section 60(2)(d).
174. Section 60(2) makes a series of changes to section 25(2) of the 2007 Act to expand the current definition of what offences are eligible for fixed penalty notices. The offences covered by fixed penalty regime is expanded to include those offences in marine and nature conservation legislation in respect of which enforcement officers specified in section 25(2A) of the 2007 Act have compliance monitoring and enforcement functions. Section 60(2)(b) also modifies section 25(2A) of the 2007 Act to add offences under Part 4 of the Marine (Scotland) Act 2010, and offences under section 5(5) (wellboat operations) of the Act to the fixed penalty regime. Section 25(2A) of the 2007 Act is introduced through section 60(2)(c) of the Act.
175. Section 60(2)(c) inserts section 25(2B) in the 2007 Act to allow the Scottish Ministers to amend the definition of a relevant offence or the specification of different enforcement officers by order.
176. Section 60(3) amends section 27 of the 2007 Act to replace the current cap on the maximum fixed penalty notice with one of £10,000.
177. Section 60(4) amends section 31 of the 2007 Act to change the reference to British sea-fishery officer to fixed penalty officer. Again this reflects the fact that it will be fixed penalty officers who will issue fixed penalty notices in future rather than British sea-fishery officers as at present.
178. Section 60(5) of the Act replaces the heading at Part 4 of the 2007 Act with “Fixed penalty notices” to reflect the fact that the fixed penalty provisions in Part 4 will cover areas other than sea fisheries.

Section 61- Fixed penalty notices and civil sanctions under the Marine (Scotland) Act 2010

179. **Section 61** amends schedule 2 to the Marine Scotland Act 2010 (“the 2010 Act”) to preclude the possibility of the Scottish Ministers imposing a civil sanction under the 2010 Act either in the form of a fixed or variable monetary penalty in respect of a relevant offence under Part 4 of the 2010 Act, where a fixed penalty notice has been issued in respect of the same offence under section 25 of the Aquaculture and Fisheries (Scotland) Act 2007.