



Aquaculture and Fisheries (Scotland) Act 2013

2013 asp 7

PART 1

AQUACULTURE

CHAPTER 2

FISH FARMING: EQUIPMENT AND WELLBOATS

Equipment

3 Technical requirements for equipment used in fish farming

- (1) The Scottish Ministers may, for a purpose mentioned in subsection (2), by regulations—
 - (a) prescribe technical requirements for equipment to be used for or in connection with fish farming,
 - (b) impose requirements on fish farm operators in relation to the training of their employees or agents in connection with the installation, maintenance or operation of equipment for which requirements are prescribed under paragraph (a), and
 - (c) make provision for ensuring compliance with the requirements prescribed or imposed by the regulations.
- (2) The purposes are—
 - (a) the containment of fish,
 - (b) the prevention of escape of fish,
 - (c) the prevention, control or reduction of parasites, pathogens or diseases.
- (3) Regulations under subsection (1) may, in particular—

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- (a) prescribe requirements as to the design, construction (including the materials used in construction), manufacture, installation, maintenance or size of equipment,
 - (b) provide for the appointment or authorisation of persons (“inspectors”) to inspect equipment and records for the purpose of ensuring compliance with the regulations,
 - (c) for that purpose, confer on inspectors—
 - (i) powers of entry, search and seizure,
 - (ii) powers to obtain information or evidence,
 - (d) impose requirements on fish farm operators, or their employees or agents, as to—
 - (i) the provision of information to inspectors,
 - (ii) allowing access by inspectors, and
 - (iii) cooperation with inspectors,
 - (e) confer powers on inspectors to impose such requirements,
 - (f) impose requirements on fish farm operators, or their employees or agents, as to—
 - (i) the keeping of records in relation to equipment and the making of those records available for inspection,
 - (ii) the keeping of records in relation to training provided or undertaken in pursuance of any requirement imposed under subsection (1)(b) and the making of those records available for inspection,
 - (iii) the notification or reporting of failures in equipment,
 - (g) create criminal offences in relation to failures to comply with the regulations and make other provision for dealing with such offences, including—
 - (i) the provision of defences,
 - (ii) evidential matters,
 - (h) provide for other sanctions for dealing with such failures,
 - (i) provide for procedures (including appeals) for enforcing compliance with the regulations,
 - (j) make different provision for different types of fish farming and different species of fish.
- (4) Regulations under subsection (1) may prescribe or impose requirements—
- (a) by reference to a document published by or on behalf of the Scottish Ministers or such other person, or person of such description, as is specified in the regulations, or
 - (b) by reference to the approval or satisfaction of such person, or person of such description, as is specified in the regulations.
- (5) Where regulations under subsection (1) create a criminal offence, they must provide for the offence to be—
- (a) triable summarily, and
 - (b) punishable by a fine not exceeding level 4 on the standard scale.
- (6) Regulations under subsection (1) may provide for continuing offences and for any such offences to be punishable by a daily or other periodic fine of such amount as is specified in the regulations.

- (7) Sanctions provided for under subsection (3)(h) may include suspension or revocation of any authorisations required by fish farm operators to operate as such.
- (8) In this section, “fish farm operators” means persons carrying on a business of fish farming.

Wellboats

4 Meaning of “wellboat”

- (1) In this Chapter, “wellboat” means a vessel that contains a tank or well for holding water (including sea water)—
 - (a) into which live farmed fish may be taken, and
 - (b) in which the fish may be subsequently kept,for a purpose mentioned in subsection (2).
- (2) The purposes are—
 - (a) the transportation of farmed fish,
 - (b) the storage of farmed fish,
 - (c) the slaughter of farmed fish,
 - (d) the treatment of farmed fish in connection with health, parasites, pathogens or diseases,
 - (e) the grading of farmed fish.
- (3) For the purposes of this section, it is irrelevant whether or not the farmed fish remain alive in the course of any activity mentioned in subsection (2).
- (4) In this section—
 - “farmed fish” means fish produced by fish farming, and
 - “grading”, in relation to farmed fish, means separating and sorting the fish according to size.

5 Control and monitoring of operations of wellboats

- (1) The Scottish Ministers may by regulations make provision for or about controlling and monitoring the operations of any wellboat in Scotland.
- (2) Regulations under subsection (1) may, in particular, include provision for or about—
 - (a) the measures to be taken to prevent, reduce, remove or otherwise control the risk of the spread of parasites, pathogens or diseases as a result of wellboat operations,
 - (b) the installation of such equipment, or types of equipment, as may be specified—
 - (i) to prevent, reduce, remove or otherwise control such a risk,
 - (ii) to enable compliance with the regulations to be monitored,
 - (c) the reporting to the Scottish Ministers of such matters as may be specified.
- (3) Regulations under subsection (1) may impose requirements on, and only on—
 - (a) the master of a wellboat,
 - (b) an owner of a wellboat,

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- (c) a charterer of a wellboat.
- (4) Regulations under subsection (1) may make different provision for—
 - (a) different descriptions of wellboat,
 - (b) different operations,
 - (c) different species of fish,
 - (d) different periods of time.
- (5) A person commits an offence if the person—
 - (a) acts in contravention of regulations under subsection (1),
 - (b) fails to take any action required of that person by such regulations, or
 - (c) otherwise fails to comply with any requirement imposed on that person by such regulations.
- (6) No proceedings may be taken or continued against a person for an offence under subsection (5) in respect of a matter in relation to which an enforcement notice under section 6 has been served.
- (7) It is a defence for a person charged with an offence under subsection (5)(b) or (c) to show that the person had a reasonable excuse for failing to take any action or (as the case may be) to comply with any requirement mentioned in that subsection.
- (8) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (9) In this section, “specified” means specified in regulations made under subsection (1).

6 Enforcement notices

- (1) This section applies where the Scottish Ministers are satisfied that a person has failed or is failing to comply with any requirement imposed on that person by regulations under section 5(1).
- (2) The Scottish Ministers may serve a notice (an “enforcement notice”) on the person.
- (3) The enforcement notice must specify—
 - (a) the grounds for the service of the notice,
 - (b) the action that the person on whom it is served is required to take in order to ensure compliance with the regulations, and
 - (c) the date by which that action is to be taken, which must be no earlier than 14 days after the day on which the notice is served.
- (4) The Scottish Ministers may publicise the serving of an enforcement notice; and they may do so to such extent, in such manner and in such form as they think fit.
- (5) A person on whom an enforcement notice has been served may appeal by way of summary application to a sheriff against the notice.
- (6) An appeal under subsection (5) must be made before the expiry of the period of 7 days beginning with the day on which the notice is served.
- (7) Where an appeal is made under subsection (5), the enforcement notice has no effect until the appeal is withdrawn or finally determined.
- (8) In an appeal under subsection (5)—

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- (a) the sheriff may make such order as the sheriff thinks appropriate, and
 - (b) the sheriff's decision is final.
- (9) If the appeal is not upheld, the date by which the action specified in the notice is to be taken is such date as the sheriff may specify in the order disposing of the appeal.
- (10) A person on whom an enforcement notice has been served commits an offence if the person fails to comply with the requirements of the notice.
- (11) It is a defence for a person charged with an offence under subsection (10) to show that the person had a reasonable excuse for failing to comply with such requirements.
- (12) A person who commits an offence under subsection (10) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

7 Marine enforcement officers' functions

- (1) For the purpose of enforcing regulations under section 5(1), a marine enforcement officer has—
- (a) the common enforcement powers conferred by Part 7 of the Marine (Scotland) Act 2010,
 - (b) the power conferred by section 150 of that Act (power to require information relating to certain substances and objects),
 - (c) the power conferred by subsection (2), and
 - (d) the powers conferred by section 8.
- (2) Where the requirements of an enforcement notice under section 6 have not been complied with, a marine enforcement officer may take such action as the officer considers necessary to fulfil the requirements.
- (3) Sections 151 to 155 of the Marine (Scotland) Act 2010 (duties and liabilities of, and offences in relation to, marine enforcement officers) have effect as if—
- (a) any reference to a power conferred by Part 7 of that Act included a reference to—
 - (i) such a power as applied by subsection (1),
 - (ii) the power conferred by subsection (2), and
 - (iii) the powers conferred by section 8, and
 - (b) any reference to a marine enforcement officer's functions under that Act included a reference to—
 - (i) such functions as applied by subsection (1),
 - (ii) a marine enforcement officer's function under subsection (2), and
 - (iii) a marine enforcement officer's functions under section 8.
- (4) The powers which a marine enforcement officer has for the purposes of enforcing regulations under section 5(1) may be exercised in the Scottish marine area and in any other part of Scotland.
- (5) A marine enforcement officer may take action as mentioned in subsection (2) whether or not proceedings have been taken for an offence under section 6(10).
- (6) The Scottish Ministers may recover any expenses reasonably incurred by a marine enforcement officer in taking action as mentioned in subsection (2) from the person on whom the enforcement notice was served.

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(7) In this section, “Scottish marine area” has the same meaning as in section 1 of the Marine (Scotland) Act 2010.

8 Power to detain wellboats in connection with court proceedings

(1) This section applies where—

- (a) a marine enforcement officer has reasonable grounds for suspecting that an offence under section 5(5) has been committed by the master, an owner or a charterer of a wellboat (referred to as “A”), and
- (b) the officer reasonably believes that—
 - (i) if proceedings are taken against A for the offence, there is a real risk that A will not attend court unless the wellboat is detained under this section, or
 - (ii) if A is convicted of the offence and the court by or before which A is convicted imposes a fine on A, it is likely that the court will order the vessel to be detained.

(2) Where this section applies, a marine enforcement officer may—

- (a) take, or arrange for another person to take, the wellboat and its crew to the port that appears to the officer to be the nearest convenient port, or
- (b) require any person who is for the time being in charge of the wellboat to take it and its crew to that port.

(3) When the wellboat has been taken to port, the officer may—

- (a) detain it there, or
- (b) require the person for the time being in charge of it to do so.

(4) A marine enforcement officer who detains a wellboat under this section must, if it is reasonably practicable to do so, serve a notice on the person who is for the time being in charge of the wellboat.

(5) The notice must state—

- (a) the reasons for detaining the wellboat, and
- (b) the circumstances in which the wellboat may be released.

9 Release of wellboat detained under section 8

(1) This section applies where a wellboat is being detained under section 8.

(2) The wellboat ceases to be detained under that section if one of the following things occurs—

- (a) the notice of detention is withdrawn,
- (b) a sheriff orders the release of the wellboat under section 10,
- (c) any proceedings taken against the master, owner or charterer of the wellboat have concluded,
- (d) the court referred to in section 8(1)(b)(ii) exercises any power it has to order the wellboat to be detained.

(3) A notice of detention is withdrawn by the service by a marine enforcement officer of a further notice on the person who is for the time being in charge of the wellboat, stating that the wellboat is released.

- (4) If any of the grounds of release mentioned in subsection (5) applies, then any notice of detention must be withdrawn as soon as possible.
- (5) The grounds of release are—
- (a) that a procurator fiscal has decided not to take any proceedings against the master, owner or charterer of the wellboat in respect of any offence in relation to which the wellboat was detained,
 - (b) where a fixed penalty notice has been issued in respect of such an offence, that the appropriate fixed penalty has been paid,
 - (c) that there are no grounds for believing that any person referred to in paragraph (a) against whom proceedings have been, or may be, taken will fail to attend court,
 - (d) that there are no grounds for believing that the court referred to in section 8(1)(b)(ii) will order the wellboat to be detained.
- (6) In this section—
- “appropriate fixed penalty” has the meaning given in section 27(2) of the Aquaculture and Fisheries (Scotland) Act 2007 (amount and payment of fixed penalty),
 - “fixed penalty notice” means a fixed penalty notice under section 25(1) of that Act (issue of fixed penalty notices),
 - “notice of detention” means a notice served under section 8(4).

10 Power of sheriff to order release of wellboats

- (1) This section applies where a wellboat is being detained under section 8.
- (2) If, on an application to a sheriff by the master, an owner or a charterer of the wellboat, the sheriff is satisfied as to either of the matters mentioned in subsection (4), the sheriff may order that the wellboat be released.
- (3) An application under subsection (2) is to be made by way of summary application.
- (4) Those matters are that—
- (a) the continued detention of the wellboat under section 8 is not necessary to secure that the master, an owner or a charterer of the wellboat will attend court, or
 - (b) there are no grounds for believing that the court referred to in subsection (1)(b)(ii) of that section will order the vessel to be detained.