



Aquaculture and Fisheries (Scotland) Act 2013

2013 asp 7

PART 1

AQUACULTURE

CHAPTER 3

COMMERCIALLY DAMAGING SPECIES

Orders relating to commercially damaging species

11 Specification of commercially damaging species

- (1) The Scottish Ministers may, for the purposes of this Chapter, by order specify as a commercially damaging species—
- a species of fish or shellfish,
 - any other species of animal,
 - a species of plant.
- (2) The Scottish Ministers may make an order under subsection (1) in relation to a species only if they consider that the species—
- if not controlled, would be likely to have a significant adverse impact on the economic or commercial interests of a person who carries on a business of fish farming or shellfish farming, and
 - is itself of little or no commercial value.

12 Movement of species, etc.

- (1) The Scottish Ministers may by order make provision 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,

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- (b) any other species of animal or plant the movement of which may be associated with the movement of such a commercially damaging species,
 - (c) any equipment or other material used for or in connection with fish farming or shellfish farming, the movement of which may be so associated,
 - (d) water in which a commercially damaging species, or a species mentioned in paragraph (b), is present or suspected of being present.
- (2) An order under subsection (1) may—
- (a) designate an area in respect of which any prohibition or control of movement applies,
 - (b) make provision in relation to the enforcement of the provisions of the order, including provision for the issue of notices imposing requirements and the action that may be taken in cases where such notices are not complied with,
 - (c) make provision in relation to appeals against such notices or other actions taken in connection with the enforcement of the provisions of the order,
 - (d) where the movement of—
 - (i) a species,
 - (ii) equipment or other material, or
 - (iii) water in which a species is present or suspected of being present,
 is controlled by the order, specify conditions or requirements in respect of such movement (including conditions that must be satisfied before such movement is permitted),
 - (e) make different provision for—
 - (i) different types of commercially damaging species,
 - (ii) different types of animal or plant as mentioned in paragraph (b) of subsection (1),
 - (iii) different types of equipment or other material as mentioned in paragraph (c) of that subsection.
- (3) A person commits an offence if the person—
- (a) acts in contravention of an order under subsection (1),
 - (b) fails to take any action required of the person by such an order, or
 - (c) otherwise fails to comply with any requirement imposed on the person by such an order.
- (4) It is a defence for a person charged with an offence under subsection (3)(b) or (c) to show that the person had a reasonable excuse for failing to take the action or (as the case may be) to comply with any requirement mentioned in that subsection.
- (5) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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

- (1) An order under section 12(1) may include provision for or about—
- (a) the taking of samples of any fish from a fish farm, or shellfish from a shellfish farm, by a person appointed by the Scottish Ministers (an “appointed person”),
 - (b) the taking of samples of material from any such fish or shellfish by an appointed person,

- (c) the analysis of such fish or shellfish, or such material, by an appointed person for the purposes of ascertaining whether a commercially damaging species is present on the fish farm or shellfish farm,
 - (d) the powers of an appointed person, including powers to—
 - (i) enter any land, fish farm or shellfish farm,
 - (ii) enter any premises (other than a dwelling house) associated with the management or operation of a fish farm or shellfish farm,
 - (iii) require the operator of a fish farm or shellfish farm to provide the appointed person with samples such as are mentioned in paragraph (a) or (b),
 - (e) the size of any sample such as is mentioned in either of those paragraphs.
- (2) Subsection (3) applies to an order under section 12(1) that controls the movement of fish or shellfish that are produced by fish farming or shellfish farming.
- (3) The order may include provision for or about—
- (a) requiring a person who carries on a business of fish farming or shellfish farming to carry out a programme of surveillance of—
 - (i) the fish or shellfish the movement of which is controlled by the order,
 - (ii) any other animal, or any plant, specified in the order that is present at the place to which the fish or shellfish mentioned in sub-paragraph (i) are to be, or have been, moved,
 - (iii) such conditions of that place as may be specified in the order,
 - (b) the carrying out by a person appointed by the Scottish Ministers of such a programme of surveillance,
 - (c) the powers of a person so appointed, including powers to enter—
 - (i) any land, fish farm or shellfish farm,
 - (ii) any premises (other than a dwelling house) associated with the operation or management of a fish farm or shellfish farm,
 - (d) the matters which such a programme of surveillance is to address, including any risks associated with the movement of the fish or shellfish controlled by the order.
- (4) An order under section 12(1) which includes provision conferring a power such as is mentioned in subsection (1)(d)(i) or (ii) or subsection (3)(c) must provide—
- (a) for the power to be exercised at a reasonable hour, unless the person exercising it considers the case is one of urgency, and
 - (b) for any person who proposes to exercise the power to produce, if so required, evidence of the person's identity and appointment.

14 Offences relating to persons appointed under section 13

- (1) A person commits an offence if the person—
- (a) fails to comply with a requirement imposed by a person appointed by virtue of subsection (1)(a) or (3)(b) of section 13, or
 - (b) wilfully obstructs such a person in the exercise of a power conferred by an order under section 12(1).
- (2) It is a defence for a person charged with an offence under subsection (1)(a) to show that the person had a reasonable excuse for the failure.

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- (3) A person who commits an offence under subsection (1)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) A person who commits an offence under subsection (1)(b) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a fine.

15 Notification of presence of commercially damaging species

- (1) Any person who carries on a business of fish farming or shellfish farming at a fish farm or shellfish farm must notify the Scottish Ministers as soon as reasonably practicable after the person becomes aware of, or suspects, the presence of a commercially damaging species on the fish farm or shellfish farm.
- (2) Subsection (1) applies to any person who is employed, or acts as an agent, in connection with the operation of a fish farm or shellfish farm as it applies to a person mentioned in that subsection; but notification under this subsection need not be given if it has been given under subsection (1).
- (3) Notification under subsection (1) or (2) must contain the following—
 - (a) where the fish farm or shellfish farm is authorised as an aquaculture production business under regulation 6 of the Aquatic Animal Health (Scotland) Regulations 2009 ([S.S.I. 2009/85](#)), the name and number of the site where the commercially damaging species is present or suspected of being present,
 - (b) the name and contact details of—
 - (i) the person providing the notification, and
 - (ii) the person carrying on the business of fish farming or shellfish farming at the fish farm or shellfish farm,
 - (c) the grid reference on the ordnance map of the fish farm or shellfish farm, or part of such farm, where the commercially damaging species is present or is suspected of being present,
 - (d) the type of commercially damaging species (if known),
 - (e) the date on which the person providing the notification first became aware of, or suspected, the presence of the commercially damaging species,
 - (f) the age in months of the commercially damaging species (if known), and
 - (g) the stage of growth of the commercially damaging species (if known).
- (4) A person who fails to give a notification in accordance with subsection (1) or (2) commits an offence.
- (5) It is a defence for a person charged with an offence under subsection (4) to show that the person had a reasonable excuse for failing to give the notification.
- (6) A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.