



Aquaculture and Fisheries (Scotland) Act 2013

2013 asp 7

PART 3

SEA FISHERIES

Enforcement of sea fisheries legislation

35 Powers of British sea-fishery officers to enforce sea fisheries legislation

- (1) For the purposes of enforcing the sea fisheries legislation, a British sea-fishery officer has—
 - (a) the common enforcement powers conferred by Part 7 of the Marine (Scotland) Act 2010, and
 - (b) the powers conferred by sections 36 and 39.
- (2) Subject to subsection (3), the powers which a British sea-fishery officer has by virtue of subsection (1) for the purposes of enforcing the sea fisheries legislation may be exercised—
 - (a) in the Scottish enforcement area, and
 - (b) in relation to any Scottish fishing boat wherever it may be.
- (3) Those powers may not be exercised in relation to any British warship (that is, any ship belonging to Her Majesty and forming part of Her Majesty's armed forces).
- (4) The powers which a British sea-fishery officer has by virtue of subsection (1) are without prejudice to any other powers exercisable by the officer for the purposes of enforcing the sea fisheries legislation.
- (5) However, the officer may exercise any such other power only in a case where the officer is unable to exercise a power which the officer has by virtue of subsection (1).
- (6) So far as necessary for the purposes, or in consequence, of the exercise of the powers referred to in subsection (1)(a), references in Part 7 of the Marine (Scotland) Act 2010 to a marine enforcement officer are to be read as including references to a British sea-fishery officer.

Status: Point in time view as at 16/09/2013.

Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, PART 3. (See end of Document for details)

- (7) 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)(a), and
 - (ii) the powers conferred by sections 36 and 39, and
 - (b) any reference to a marine enforcement officer's functions under that Act included a reference to the functions of a British sea-fishery officer under—
 - (i) Part 7 of that Act as applied by subsection (1)(a), and
 - (ii) sections 36 and 39.

Commencement Information

II [S. 35](#) in force at 16.9.2013 by [S.S.I. 2013/249](#), [art. 2](#)

Detention of vessels in connection with court proceedings

36 Power to detain vessels in connection with court proceedings

- (1) This section applies where—
- (a) a British sea-fishery officer has reasonable grounds for suspecting that an offence under the sea fisheries legislation has been committed by the master, an owner or a charterer of a vessel (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 vessel 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 British sea-fishery officer may—
- (a) take, or arrange for another person to take, the vessel 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 vessel to take it and its crew to that port.
- (3) When the vessel has been taken to a 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 British sea-fishery officer who detains a vessel 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 vessel.
- (5) The notice must state—
- (a) the reasons for detaining the vessel, and
 - (b) the circumstances in which the vessel may be released.

Status: Point in time view as at 16/09/2013.

Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, PART 3. (See end of Document for details)

Commencement Information

I2 S. 36 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

37 Release of vessel detained under section 36

- (1) This section applies where a vessel is being detained under section 36.
- (2) The vessel 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 vessel under section 38,
 - (c) any proceedings taken against the master, owner or charterer of the vessel have concluded,
 - (d) the court referred to in section 36(1)(b)(ii) exercises any power it has to order the vessel to be detained.
- (3) A notice of detention is withdrawn by the service by a British sea-fishery officer of a further notice on the person who is for the time being in charge of the vessel, stating that the vessel 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 vessel in respect of any offence in relation to which the vessel 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 36(1)(b)(ii) will order the vessel to be detained.
- (6) In this section, “notice of detention” means a notice served under section 36(4).

Commencement Information

I3 S. 37 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

38 Power of sheriff to order release of vessels

- (1) This section applies where a vessel is being detained under section 36.
- (2) If, on an application to a sheriff by the master, an owner or a charterer of the vessel, the sheriff is satisfied as to either of the matters mentioned in subsection (4), the sheriff may order that the vessel be released.
- (3) An application under subsection (2) is to be made by way of summary application.

Status: Point in time view as at 16/09/2013.

Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, PART 3. (See end of Document for details)

- (4) Those matters are that—
- (a) the continued detention of the vessel under section 36 is not necessary to secure that the master, an owner or a charterer of the vessel 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.

Commencement Information

I4 S. 38 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

Inspection and seizure of objects used in commercial sea fishing

39 Power to inspect and seize objects

- (1) A British sea-fishery officer may inspect any object which the officer reasonably believes has been, or is being, used for or in connection with commercial sea fishing.
- (2) The officer may lift an object out of the sea for the purpose of inspecting it under this section.
- (3) A British sea-fishery officer who has inspected an object under this section may seize the object.
- (4) The power conferred by subsection (3) may be exercised only—
 - (a) for the purpose of determining whether an offence under the sea fisheries legislation has been, or is being, committed, or
 - (b) in relation to an object that the officer reasonably believes to be evidence of the commission of such an offence.
- (5) If, having inspected an object under this section, the officer decides not to seize it under subsection (3), the officer must, if it is reasonably practicable to do so, replace the object in the location where it was found.
- (6) If it is not reasonably practicable to replace the object in accordance with subsection (5), the officer may seize the object until such time as it may be collected by its owner.
- (7) A power conferred by this section to seize an object includes power to seize—
 - (a) anything that is attached to the object,
 - (b) anything that is contained in the object.
- (8) A reference in this section to replacing an object includes, in the case of fishing gear, a reference to re-setting the gear in the same way in which it was placed in the sea.
- (9) Anything seized under this section is to be delivered to the Scottish Ministers as soon as reasonably practicable.
- (10) In this section, “commercial sea fishing” means—
 - (a) any activity for which a licence is required by virtue of an order under section 4 (licensing of fishing boats) of the Sea Fish (Conservation) Act 1967,
 - (b) any activity regulated by an order—

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Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, PART 3. (See end of Document for details)

- (i) under section 1 (power to make orders as to fisheries for shellfish) of the Sea Fisheries (Shellfish) Act 1967, and
 - (ii) to which section 2 (right of several fishery) or 3 (right of regulating a fishery) of that Act applies, and
 - (c) any activity regulated by an order under section 1 (general power to prohibit sea fishing in specified areas) of the Inshore Fishing (Scotland) Act 1984.
- (11) The Scottish Ministers may by order modify the definition of “commercial sea fishing” in subsection (10).

Commencement Information

I5 S. 39 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

40 Reports of inspections under section 39

- (1) This section applies where a British sea-fishery officer inspects an object under section 39.
- (2) The officer must prepare a report in relation to the inspection.
- (3) The report must state—
- (a) the date and time of the inspection,
 - (b) the identity of the officer who carried out the inspection, and
 - (c) how the officer may be contacted.
- (4) In the case of an object seized under section 39(3) or (6), the report must also state—
- (a) what has been seized,
 - (b) the reasons for its seizure, and
 - (c) any further action that it is proposed will be taken in relation to the object.
- (5) Where the object has not been seized under section 39(3) or (6), the officer must, if it is reasonably practicable to do so, attach a copy of the report to the object.
- (6) If it is not reasonably practicable to do so, the officer must serve a copy of the report on every person who appears to the officer to be an owner of the object.
- (7) In a case where the officer, after taking reasonable steps to do so, is unable to identify any person as an owner of the object, the officer must take such steps as the officer thinks fit to bring the contents of the report to the attention of persons likely to be interested in it.
- (8) Where—
- (a) the object has been seized under section 39(3), and
 - (b) one of the conditions in subsection (9) is satisfied,
- the Scottish Ministers must serve a copy of the report on every person who appears to them to be an owner of the object.
- (9) The conditions are—
- (a) that a procurator fiscal has decided not to take any proceedings in respect of any offence in relation to which the object was seized,

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- (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 any proceedings taken in respect of such an offence have concluded.
- (10) Where the object has been seized under section 39(6), the Scottish Ministers must serve a copy of the report on every person who appears to the Ministers to be an owner of the object at the same time as they serve a notice of collection on that person under section 42.
- (11) In a case where the Scottish Ministers, after taking reasonable steps to do so, are unable to identify any person as an owner of the object—
- (a) the reference in this section to a requirement for the Scottish Ministers to serve a copy of the report on such a person is to be read as a reference to a requirement to take such steps as the Ministers think fit to bring the contents of the report to the attention of persons likely to be interested in it, and
 - (b) the reference in subsection (10) to serving a notice of collection under section 42 is to be read as a reference to taking the steps referred to in subsection (5) of that section.

Commencement Information

I6 S. 40 in force at 16.9.2013 by [S.S.I. 2013/249](#), [art. 2](#)

41 Retention of objects seized under section 39(3)

- (1) An object seized by a British sea-fishery officer under section 39(3) may be retained by the Scottish Ministers.
- (2) If any of the grounds of release in subsection (3) applies, the Scottish Ministers must, as soon as is reasonably practicable, make the object available for collection.
- (3) The grounds of release are—
 - (a) that a procurator fiscal has decided not to take proceedings in respect of any offence in relation to which the object was seized,
 - (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 any proceedings taken in respect of such an offence have concluded without an order for forfeiture having been made in respect of the object.
- (4) Subsection (2) does not apply if the object is liable to forfeiture under section 46.
- (5) Any reference in this section to an object seized under subsection (3) of section 39 includes a reference to anything seized by virtue of subsection (7) of that section.

Commencement Information

I7 S. 41 in force at 16.9.2013 by [S.S.I. 2013/249](#), [art. 2](#)

42 Disposal of objects seized under section 39

- (1) This section applies to—

Status: Point in time view as at 16/09/2013.

Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, PART 3. (See end of Document for details)

- (a) an object seized under section 39(3) which the Scottish Ministers—
 - (i) no longer wish to retain for any purpose, or
 - (ii) are required to make available for collection by virtue of section 41,
 - (b) an object seized under section 39(6).
- (2) In this section, “notice of collection” means a notice stating that—
- (a) the object specified in the notice is available to be collected from the location specified in the notice, and
 - (b) if the object is not collected before the end of the period of 3 months beginning with the date specified in the notice, the Scottish Ministers will dispose of the object.
- (3) The Scottish Ministers must serve a notice of collection on every person who appears to them to be an owner of the object.
- (4) The Scottish Ministers may take any other steps they think fit to notify every such person that the object is available to be collected.
- (5) If the Scottish Ministers, after taking reasonable steps to do so, are unable to identify any person as an owner of the object in order to serve a notice of collection, the Scottish Ministers must take such steps as they think fit to bring the information contained in the notice to the attention of persons likely to be interested in it.
- (6) If the Scottish Ministers comply with subsection (3) or (as the case may be) (5), they may, at the end of the period mentioned in subsection (2)(b), dispose of the object in whatever way they think fit.
- (7) Any reference in this section to an object seized under subsection (3) or (6) of section 39 includes a reference to anything seized by virtue of subsection (7) of that section.

Commencement Information

18 S. 42 in force at 16.9.2013 by [S.S.I. 2013/249](#), [art. 2](#)

Retention and disposal of property seized by BSFOs

43 Retention of property seized by British sea-fishery officers

- (1) This section applies to property—
- (a) seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation, other than an object seized under section 39, and
 - (b) which was seized—
 - (i) in the Scottish enforcement area, or
 - (ii) on board a Scottish fishing boat.
- (2) The officer must deliver the property to the Scottish Ministers as soon as reasonably practicable.
- (3) Subsection (2) is subject to paragraph 13 of schedule 2.
- (4) The Scottish Ministers may retain the property.

Status: Point in time view as at 16/09/2013.

Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, PART 3. (See end of Document for details)

- (5) If any of the grounds of release in subsection (6) applies, the Scottish Ministers must, as soon as is reasonably practicable, make the property available for collection.
- (6) The grounds of release are—
- (a) that a procurator fiscal has decided not to take proceedings in respect of any offence in relation to which the property was seized,
 - (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 any proceedings taken in respect of such an offence have concluded without an order for forfeiture having been made in respect of the property.
- (7) Subsection (5) does not apply if the property is liable to forfeiture under section 46 or 47.

Commencement Information

19 S. 43 in force at 16.9.2013 by [S.S.I. 2013/249](#), [art. 2](#)

44 Power of Scottish Ministers to sell seized fish in their possession

- (1) The Scottish Ministers may sell any fish that are being retained by them under section 43.
- (2) Any power which a court has to order the forfeiture of any such fish may instead be exercised in relation to the proceeds of any sale of the fish under this section.
- (3) Subject to subsection (6), the proceeds of any sale under this section may be retained by the Scottish Ministers until such time as—
 - (a) a court exercises any power it has to order the forfeiture of the proceeds, or
 - (b) any of the grounds of release mentioned in subsection (4) applies.
- (4) The grounds of release are—
 - (a) that a procurator fiscal has decided not to take proceedings in respect of any offence in relation to which the fish were seized,
 - (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 any proceedings taken in respect of such an offence have concluded without any order for forfeiture having been made.
- (5) If any of the grounds of release mentioned in subsection (4) applies, the Scottish Ministers must, as soon as is reasonably practicable, release the proceeds of sale to any person who appears to the Scottish Ministers to have been an owner of the fish at the time of the seizure of the fish.
- (6) If the proceeds of sale are still in the Scottish Ministers' possession after the end of the period of 6 months beginning with the date on which the fish were sold, the Scottish Ministers may retain the proceeds and apply them in any manner they think fit.
- (7) The Scottish Ministers may exercise their power under subsection (6) to retain and apply the proceeds of sale only if it is not practicable at the time when the power is exercised to dispose of the proceeds by releasing them immediately to the person to whom they are required to be released.

Status: Point in time view as at 16/09/2013.

Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, PART 3. (See end of Document for details)

- (8) Subject to subsection (11), any fish sold under this section must be sold at auction.
- (9) Before selling the fish, the Scottish Ministers must give the owner of the fish a reasonable opportunity to make representations as to the manner in which the fish are sold.
- (10) Subsection (11) applies if the owner of the fish requests that the fish be sold—
 - (a) at a particular auction, or
 - (b) by a method of sale other than by auction.
- (11) The Scottish Ministers must comply with the request unless they consider the request to be unreasonable.
- (12) The Scottish Ministers may deduct from the proceeds of sale any reasonable expenses incurred by them in selling the fish.
- (13) Where there is more than one owner of the fish, subsection (11) applies only if the request under subsection (10) is made by or on behalf of all the owners.

Commencement Information

I10 S. 44 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

45 Disposal of property retained by Scottish Ministers under section 43

- (1) This section applies to any property being retained by the Scottish Ministers under section 43 which they—
 - (a) no longer wish to retain for any purpose, or
 - (b) are required to make available for collection by virtue of that section.
- (2) In this section, a “notice of collection” is a notice stating that—
 - (a) the property specified in the notice is available to be collected from the location so specified, and
 - (b) if the property is not collected before the end of the period of 3 months beginning with the date specified in the notice, the Scottish Ministers will dispose of the property.
- (3) The Scottish Ministers must serve a notice of collection on every person who appears to them to be an owner of the property.
- (4) The Scottish Ministers may take any other steps they consider appropriate to notify every such person that the property is available to be collected.
- (5) If the Scottish Ministers, after taking reasonable steps to do so, are unable to identify any person as owning the property, they must—
 - (a) if it is reasonably practicable to do so, serve a notice of collection on every person who is an appropriate person for the purposes of this subsection, and
 - (b) take such steps as they think fit to bring the information contained in the notice of collection to the attention of persons likely to be interested in it.
- (6) For the purposes of subsection (5) each of the following is an “appropriate person”—
 - (a) in the case of property seized from a vessel, the master, owner and charterer (if any) of the vessel at the time of the seizure of the property,

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- (b) in the case of property seized from premises, every person who appears to the Scottish Ministers to have been an occupier of the premises at that time,
 - (c) in any other case, the person (if any) from whom the property was seized.
- (7) If the Scottish Ministers comply with subsection (3) or (as the case may be) (5), they may, at the end of the period mentioned in subsection (2)(b), dispose of the property in whatever way they think fit.

Commencement Information

I11 S. 45 in force at 16.9.2013 by [S.S.I. 2013/249](#), [art. 2](#)

Forfeiture

46 Forfeiture of prohibited items

- (1) This section applies to any item—
- (a) seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation, and
 - (b) which was seized—
 - (i) in the Scottish enforcement area, or
 - (ii) on board a Scottish fishing boat.
- (2) The item is liable to forfeiture under this section if the use of the item for sea fishing would in any circumstances constitute an offence under the law of Scotland.
- (3) An item forfeited under this section is to be forfeited to the Scottish Ministers who may dispose of it in any manner they think fit.

Commencement Information

I12 S. 46 in force at 16.9.2013 by [S.S.I. 2013/249](#), [art. 2](#)

47 Forfeiture of fish failing to meet size requirements

- (1) This section applies to any fish—
- (a) seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation, and
 - (b) which were seized—
 - (i) in the Scottish enforcement area, or
 - (ii) on board a Scottish fishing boat.
- (2) The fish are liable to forfeiture under this section if, by virtue of the fish failing to meet requirements as to size, an offence under the law of Scotland has been committed in respect of the fish.
- (3) Any fish forfeited under this section are to be forfeited to the Scottish Ministers who may dispose of the fish in any manner they think fit.

Status: Point in time view as at 16/09/2013.

Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, PART 3. (See end of Document for details)

Commencement Information

I13 S. 47 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

48 Further provision about forfeiture under section 46 or 47

Schedule 2, which makes further provision about forfeiture under section 46 or 47, has effect.

Commencement Information

I14 S. 48 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

Inshore sea fishing

49 Contravention of orders prohibiting inshore sea fishing

(1) The Inshore Fishing (Scotland) Act 1984 is amended in accordance with this section.

(2) In section 4 (offences), after subsection (1A) insert—

“(1B) A person commits an offence if—

- (a) the person is found in, or in the immediate vicinity of, the area specified in an order under section 1 of this Act;
- (b) the person is found there at, or about, a time at which the prohibition under the order applies;
- (c) when so found, the person is in possession of such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of fishing in contravention of the order; and
- (d) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the person intends to fish in contravention of the order.”.

(3) After section 4 insert—

“4A Contravention of orders under section 1: presumption

(1) Subsection (2) applies in proceedings against a person (“the accused”) for an offence under section 4(1) of this Act involving fishing in contravention of a prohibition contained in an order under section 1 of this Act (other than a prohibition under section 1(2)(d)).

(2) It is to be presumed that the accused was, or had been, fishing in contravention of the order if—

- (a) it is proved that—
 - (i) the accused was found in, or in the immediate vicinity of, the area specified in the order;
 - (ii) the accused was found there at, or about, a time at which the prohibition under the order applies; and

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- (iii) when so found, the accused was in possession of any of the things mentioned in subsection (3); and
 - (b) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the accused was, or had been, fishing in contravention of the order.
- (3) The things are—
- (a) such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of fishing in contravention of the order;
 - (b) sea fish the fishing for which is prohibited by the order.
- (4) Subsection (2) does not apply if evidence is adduced sufficient to raise an issue as to whether—
- (a) the accused's presence in, or in the vicinity of, the area specified in the order was for the purpose of fishing in contravention of the order; or
 - (b) where the accused was found in possession—
 - (i) of any of the things mentioned in paragraph (a) of subsection (3), the possession of the thing was for that purpose;
 - (ii) of sea fish mentioned in paragraph (b) of that subsection, the fish were caught or taken in contravention of the order.”.

Commencement Information

I15 S. 49 in force at 16.9.2013 by [S.S.I. 2013/249](#), [art. 2](#)

50 Powers of entry

- (1) The Inshore Fishing (Scotland) Act 1984 is amended in accordance with this section.
- (2) After section 6 insert—

“6A Power to enter land

- (1) The powers conferred by this section are exercisable by British sea-fisheries officers in relation to any land for the purposes of enforcing the provisions of any order under section 1 of this Act and the provisions of section 3 of this Act.
- (2) Any such officer may at any time enter any land (including the foreshore) other than a dwelling house, on foot or in a vehicle, with or without persons assigned to the officer in the officer's duties, and for that purpose may—
 - (a) open lockfast places;
 - (b) remove any objects preventing the officer from gaining access to the land;
 - (c) require any person who has placed an object in such a position as to prevent the officer from gaining access to the land to remove the object;
 - (d) require the owner or occupier of the land to allow the officer access to the land.

Status: Point in time view as at 16/09/2013.

Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, PART 3. (See end of Document for details)

- (3) Any officer who proposes to exercise the power of entry conferred by subsection (2) above must, if so requested, produce evidence of the officer's identity.
 - (4) A person commits an offence if the person—
 - (a) wilfully obstructs a British sea-fishery officer exercising a right of entry under subsection (2) above;
 - (b) refuses or fails to comply with a requirement imposed by such an officer under paragraph (c) or (d) of that subsection.
 - (5) It is a defence for a person charged with an offence under subsection (4)(b) above of failing to comply with a requirement mentioned in that subsection to show that the person had a reasonable excuse for failing to so comply.
 - (6) A constable may arrest without warrant any person who the constable reasonably believes is committing or has committed an offence under subsection (4) above.
 - (7) Subsection (6) above is without prejudice to any power of arrest conferred by law apart from that subsection.
 - (8) A person who commits an offence under subsection (4) above is liable—
 - (a) on summary conviction to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment to a fine.
 - (9) A British sea-fishery officer is not liable in any civil or criminal proceedings for anything done in purported exercise of the powers conferred on the officer by this section, if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.”.
- (3) After section 10 insert—

“10A Crown application: Scotland

- (1) Section 6A binds the Crown and applies in relation to Crown land as it applies in relation to other land.
- (2) Nothing in that section is to be taken as in any way affecting Her Majesty in Her private capacity.
- (3) No contravention by the Crown of that section makes the Crown criminally liable.
- (4) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (5) For the purposes of subsection (1), “Crown land” means land an interest in which—
 - (a) belongs to Her Majesty in right of the Crown;
 - (b) belongs to an office-holder in the Scottish Administration or a government department or is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department.

Status: Point in time view as at 16/09/2013.

Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, PART 3. (See end of Document for details)

- (6) In subsection (5), “an office-holder in the Scottish Administration” is to be construed in accordance with section 126(7)(a) of the Scotland Act 1998.”.

Commencement Information

I16 S. 50 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

Enforcement of EU rules

51 Modification of the Fisheries Act 1981: enforcement of EU rules

- (1) Section 30 of the Fisheries Act 1981 (enforcement of Community obligations) is amended in accordance with this section.

- (2) In subsection (1)—

- (a) for paragraph (a) substitute—

“(a) if any fishing boat within the Scottish Zone—

- (i) fishes in contravention of any such restriction; or
(ii) fails to comply with any such obligation,

the master, the owner and the charterer (if any) are each guilty of an offence;”

- (b) after paragraph (a) insert—

“(aa) if any Scottish fishing boat outside the Scottish Zone—

- (i) fishes in contravention of any such restriction; or
(ii) fails to comply with any such obligation,

the master, the owner and the charterer (if any) are each guilty of an offence;

- (ab) if any person in Scotland—

- (i) fishes in contravention of any such restriction; or
(ii) fails to comply with any such obligation,

the person is guilty of an offence;”

- (c) in paragraph (b), for “such offences” substitute “offences under paragraph (a), (aa) or (ab) of this subsection”;

- (d) in subsection (3), after the definition of “the Ministers” insert—

““Scottish fishing boat” means a fishing boat which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Scotland as the port to which the boat is to be treated as belonging;

“Scottish Zone” has the same meaning as in the Scotland Act 1998 (see section 126(1) and (2) of that Act).”.

Commencement Information

I17 S. 51 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

Status: Point in time view as at 16/09/2013.

Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, PART 3. (See end of Document for details)

Supplementary

52 Conclusion of proceedings

- (1) This section applies for determining when any proceedings have concluded for the purposes of this Part.
- (2) Where proceedings are terminated by an appealable decision, they are not to be regarded as concluded—
 - (a) until the end of the ordinary time for appeal against the decision, if no appeal in respect of the decision is brought within that time, or
 - (b) if an appeal in respect of the decision is brought within that time, until the conclusion of the appeal.
- (3) Subsection (2) applies for determining when any proceedings on appeal are concluded for the purposes of paragraph (b) of that subsection as it applies for determining when the original proceedings are concluded.
- (4) Any reference in subsection (2) to a decision that terminates proceedings includes a reference to a verdict, sentence, finding or order that puts an end to the proceedings.

Commencement Information

I18 S. 52 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

53 Interpretation of Part 3

- (1) In this Part—
 - “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),
 - “fish” includes shellfish,
 - “fixed penalty notice” means a fixed penalty notice under section 25(1) of the Aquaculture and Fisheries (Scotland) Act 2007,
 - “the Scottish enforcement area” means—
 - (a) Scotland, and
 - (b) the Scottish zone,
 - “Scottish fishing boat” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Scotland as the port to which the boat is to be treated as belonging,
 - “the Scottish zone” has the same meaning as in the Scotland Act 1998 (see section 126(1) and (2) of that Act),
 - “sea fisheries legislation” means, subject to subsection (2)—
 - (a) any enactment relating to sea fishing, including any enactment relating to fishing for shellfish, salmon or migratory trout, and
 - (b) any enforceable EU restrictions and enforceable EU obligations relating to sea fishing.
- (2) “Sea fisheries legislation” does not include—
 - (a) the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003, or

Status: Point in time view as at 16/09/2013.

Changes to legislation: There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, PART 3. (See end of Document for details)

- (b) any Order in Council under section 111 of the Scotland Act 1998 (regulation of Border rivers).

Status:

Point in time view as at 16/09/2013.

Changes to legislation:

There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, PART 3.