



# Aquaculture and Fisheries (Scotland) Act 2013

2013 asp 7

## PART 3

### SEA FISHERIES

#### *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.

**Changes to legislation:** There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, Cross Heading: Inspection and seizure of objects used in commercial sea fishing. (See end of Document for details)

- (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—
    - (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

**II** 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—

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- (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,
  - (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.

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**Commencement Information**

**I2** 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.

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**Commencement Information**

**I3** 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—
  - (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.

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**Commencement Information**

**I4** S. 42 in force at 16.9.2013 by S.S.I. 2013/249, art. 2

**Changes to legislation:**

There are currently no known outstanding effects for the Aquaculture and Fisheries (Scotland) Act 2013, Cross Heading: Inspection and seizure of objects used in commercial sea fishing.