



Aquaculture and Fisheries (Scotland) Act 2013

2013 asp 7

PART 5

MISCELLANEOUS

Charging

59 Power to charge in connection with fisheries functions

- (1) The Scottish Ministers may by regulations make provision for or about the imposition of charges in connection with the carrying out of such fisheries functions as are specified in the regulations.
- (2) In this section, “fisheries functions” means—
 - (a) functions of the Scottish Ministers under any legislation relating to—
 - (i) fish farming or shellfish farming,
 - (ii) salmon or freshwater fisheries,
 - (iii) sea fishing, or
 - (b) functions of any other person under any such legislation so far as the person is appointed or authorised by the Scottish Ministers for the purposes of enforcing, or otherwise ensuring compliance with, the legislation.
- (3) Regulations under subsection (1) may include provision—
 - (a) specifying, or for determining, the amount of charges,
 - (b) specifying, or for determining, the persons or types of person who are to pay charges,
 - (c) specifying, or for determining, the circumstances in which charges are payable,
 - (d) for making the carrying out of specified fisheries functions conditional on the payment of charges,
 - (e) for the imposition of annual or other recurring charges,
 - (f) for the reduction or waiver of, or exemptions from, charges,

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- (g) for the recovery and collection of charges,
 - (h) for the method and timing of payment of charges,
 - (i) for determining disputes as to the amount of, or liability for, charges.
- (4) Regulations under subsection (1)—
- (a) may have the effect of requiring a person to pay a charge only if, and so far as, the person is someone in relation to whom a specified fisheries function has been, or is to be, carried out, and
 - (b) must not have the effect of imposing a charge in a particular case that exceeds the reasonable costs incurred in the carrying out of a specified fisheries function in that case.
- (5) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.
- (6) Regulations under subsection (1) may make different provision for—
- (a) different fisheries functions,
 - (b) different persons or types of person.
- (7) Regulations under subsection (1) do not affect any power that the Scottish Ministers have apart from this section to—
- (a) impose fees or charges, or recover costs, in connection with the carrying out of any fisheries functions, or
 - (b) provide for the imposition of such fees or charges or the recovery of such costs.
- (8) In this section, “legislation” means any—
- (a) enactment, or
 - (b) EU instrument containing an enforceable EU obligation or an enforceable EU restriction.

Fixed penalty notices

60 Fixed penalty notices

- (1) Part 4 of the Aquaculture and Fisheries (Scotland) Act 2007 (sea fisheries) is amended in accordance with this section.
- (2) In section 25 (issue of fixed penalty notices)—
- (a) in subsection (1), for “British sea-fishery” substitute “fixed penalty”,
 - (b) in subsection (2)—
 - (i) the words “is an offence” are repealed,
 - (ii) for paragraphs (a) and (b) substitute—
 - “(a) is an offence under the Sea Fisheries enactments in respect of which a person mentioned in paragraph (a) of subsection (2A) has functions,
 - (b) is an offence under the marine protection and nature conservation legislation in respect of which a person mentioned in paragraph (b) of that subsection has functions,
 - (c) is an offence under—

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- (i) Part 4 of the Marine (Scotland) Act 2010 (marine licensing), or
 - (ii) section 5(5) of the Aquaculture and Fisheries (Scotland) Act 2013 (control and monitoring of operation of wellboats),
 - (d) in relation to a person mentioned in any of paragraphs (c) to (f) of that subsection, is an offence in respect of which the person has functions.”,
- (c) after subsection (2) insert—
 - “(2A) The persons referred to in subsection (2) are—
 - (a) a British sea-fishery officer,
 - (b) a marine enforcement officer within the meaning of section 157(1) of the Marine (Scotland) Act 2010,
 - (c) an inspector within the meaning of section 12 of this Act,
 - (d) an inspector within the meaning of regulation 3(1) of the Aquatic Animal Health (Scotland) Regulations 2009 ([S.S.I. 2009/85](#)),
 - (e) an inspector within the meaning of regulation 1(2) of the Animals and Animal Products (Import and Export) Regulations 2007 ([S.S.I. 2007/194](#)) who is appointed as mentioned in that regulation by the Scottish Ministers for purposes relating to fish farming or shellfish farming,
 - (f) an authorised officer within the meaning of regulation 2(1) of the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997 ([S.I. 1997/1729](#)) appointed (whether solely or jointly) by the Scottish Ministers to act in matters arising under those Regulations relating to fish farming or shellfish farming or the products of either such type of farming.
 - (2B) The Scottish Ministers may by order modify—
 - (a) subsection (2) so as to amend the definition of “relevant offence”,
 - (b) subsection (2A) so as to—
 - (i) add or remove a description of a person to or from those for the time being listed in that subsection,
 - (ii) vary a description of a person for the time being listed in that subsection.
 - (2C) In subsection (2A)(e) and (f), “fish farming” and “shellfish farming” have the same meanings as in section 12.
 - (2D) Despite subsection (1), a fixed penalty officer may not issue a notice in respect of a relevant offence that involves—
 - (a) assault on a person mentioned in subsection (2A),
 - (b) obstructing such a person in the exercise of the person’s powers,
 - (c) failure to comply with a requirement imposed, or instruction given, by such a person.”,
- (d) in subsection (3)—

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- (i) after the definition of “British sea-fisheries officer” insert—
 - ““fixed penalty officer” means a person appointed as such an officer by the Scottish Ministers;”,
- (ii) after the definition of “Sea Fisheries enactments” insert—
 - ““the marine protection and nature conservation legislation” has the meaning given in section 132(2) of the Marine (Scotland) Act 2010;”.
- (3) In section 27 (amount and payment of fixed penalty)—
 - (a) in subsection (1), for “80 per cent of level 4 on the standard scale” substitute “£10,000”,
 - (b) in subsection (2), for “British sea-fishery” substitute “fixed penalty”.
- (4) In section 31 (withdrawal of fixed penalty notice or expiry of period for paying), in subsection (1), for “British sea-fishery” substitute “fixed penalty”.
- (5) For the title of Part 4 substitute “Fixed penalty notices”.
- (6) The cross-heading immediately following that title is repealed.
- (7) For the cross-heading immediately preceding section 32, substitute the following Part title—
 - “PART 4A

– Miscellaneous amendments of sea fisheries legislation”.

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

- (1) Schedule 2 to the Marine (Scotland) Act 2010 (further provision about civil sanctions under Part 4 (marine licensing)) is amended in accordance with this section.
- (2) For paragraph 1 (interpretation) substitute—
 - “1 In this schedule—
 - “civil sanction” means a fixed monetary penalty or a variable monetary penalty,
 - “fixed penalty notice” means a fixed penalty notice under section 25(1) of the Aquaculture and Fisheries (Scotland) Act 2007,
 - “fixed penalty officer” has the meaning given in section 25(3) of that Act.”.
- (3) In paragraph 2 (fixed monetary penalties: other sanctions), after sub-paragraph (2)(b) insert—
 - “(c) a fixed penalty officer may not issue a fixed penalty notice to the person in respect of the act or omission giving rise to the fixed monetary penalty.”.
- (4) In paragraph 3 (variable monetary penalties: other sanctions), after sub-paragraph (b) insert—
 - “(c) a fixed penalty officer may not issue a fixed penalty notice to the person in respect of the act or omission giving rise to the variable monetary penalty.”.
- (5) After paragraph 4, insert—

“Civil sanctions and fixed penalty notices

- 4A (1) Provision under section 46 must secure that, in a case where a fixed penalty notice is issued to a person in respect of a relevant offence, the Scottish Ministers may not—
- (a) serve on the person a notice of intent referred to in section 47(2) (a) in relation to an act or omission constituting the relevant offence, or
 - (b) impose a fixed monetary penalty on the person in relation to an act or omission constituting the relevant offence.
- (2) Provision under section 48 must secure that, in a case where a fixed penalty notice is issued to a person in respect of a relevant offence, the Scottish Ministers may not—
- (a) serve on the person a notice of intent referred to in section 49(2) (a) in relation to an act or omission constituting the relevant offence, or
 - (b) impose a variable monetary penalty on the person in relation to an act or omission constituting the relevant offence.
- (3) In this paragraph “relevant offence” has the meaning given in section 25(2) of the Aquaculture and Fisheries (Scotland) Act 2007.”.