

AQUACULTURE AND FISHERIES (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Part 1: Fish Farms and Shellfish Farms

Information

Section 1 – Information about fish farms and shellfish farms

10. Subsection (1) of section 1 enables the Scottish Ministers to make an order for the purpose of obtaining information in relation to the prevention, control and reduction of parasites on fish farms and on shellfish farms. Subsection (3) enables the Scottish Ministers to make an order for the purpose of obtaining information, in respect of fish farms only, in relation to the containment of fish, prevention of escape of fish, and recovery of escaped fish. The power to make orders under subsections (1) and (3) of section 1 must be exercised by statutory instrument which is subject to annulment in pursuance of a resolution of the Scottish Parliament, by virtue of section 43 (Orders).
11. Subsections (2) and (4) of section 1 provide that orders under subsections (1) and (3) may require any person carrying on a business to which the order applies to provide such information as may be specified in the order; to compile such records as may be specified in the order; and to retain such records for such period as is specified in the order, subject to a three year maximum. Subsection (5) of section 1 provides that an inspector may require the production of any record which a person is required to retain by virtue of an order under subsection (1) or (3), and may inspect or take copies of any such records. By virtue of section 12 (Interpretation: Part 1) an inspector is a person authorised by the Scottish Ministers to act as an inspector under the Act, whether generally or for a particular purpose. Section 11(1) (Offences: general) makes it an offence to fail to comply with a requirement imposed by an inspector under subsection (5) of section 1.

Section 2 – Information: offences

12. Section 2 provides that it is an offence for a person to fail to comply, without reasonable excuse, with a requirement of an order made under subsections (1) or (3) of section 1; to knowingly provide information, or to compile a record, which is false in a material particular; or to knowingly alter a record so that it becomes false in a material particular. A person found guilty of committing any of these offences is liable to a fine not exceeding level 4 on the standard scale. This currently equates to a maximum fine of £2,500.

Parasites

Section 3 – Inspections: parasites

13. Section 3 provides for an inspector to carry out inspections of fish farms and shellfish farms for the purposes of ascertaining the levels (if any) of parasites and assessing the measures in place for the prevention, control and reduction of parasites. By virtue of section 12 (Interpretation: Part 1) an inspector is a person authorised by the Scottish Ministers to act as an inspector under the Act whether generally or for a particular purpose. Subsection (3) of section 3 provides that such inspections may include the taking of samples (including samples of or from fish and shellfish), the examination of documents or records, and the taking of copies of such documents or records. Subsection (4) of section 3 permits inspectors to arrange the carrying out of tests on samples taken during an inspection carried out under subsection (1). The tests that may be carried out are those which the inspector considers necessary for the purpose of ascertaining the levels (if any) of parasites and assessing the measures in place for the prevention, control and reduction of parasites.

Section 4 – Meaning of parasite in Part 1

14. Subsection (1) of section 4 defines “parasite” for the purposes of Part 1 of the Act as meaning *Caligus elongatus* and *Lepeophtheirus salmonis*, two species of sea lice that affect salmon on farms and in the wild. Subsection (2) enables the Scottish Ministers to modify the meaning of the term “parasite” in subsection (1) for the purposes of Part 1 by making an order. This would allow the provisions of Part 1 in respect of parasites to be exercised in respect of such other species of parasite as an order specifies are to be included within the meaning of the term “parasite”. The power to make such an order under subsection (2) of section 4 must be exercised by statutory instrument which is subject to annulment in pursuance of a resolution of the Scottish Parliament by virtue of section 43 (Orders).

Containment and escape: fish

Section 5 – Inspections: containment and escape of fish

15. Subsections (1) and (2) of section 5 provide for an inspector to carry out inspections of fish farms only, for the purposes of ascertaining the risk of escape of fish, and whether fish have escaped, from the fish farm. Such inspections may also be carried out for the purpose of assessing the measures in place for the containment of fish on the fish farm (for example the condition of equipment, such as netting or cages), the measures in place for preventing the escape of fish from the fish farm (for example the regime in place for maintaining equipment, working practices, and the appropriate provision of staff training), and the measures in place for the recovery of any fish which may escape from the fish farm (for example, the availability of suitable nets on the fish farm). Subsection (3) of section 5 provides that inspections under subsection (1) may include the taking of samples (including samples of equipment), the examination of documents or records, and the taking of copies of such documents or records. Subsection (4) of section 5 permits inspectors to arrange the carrying out of tests on samples taken during an inspection carried out under subsection (1). The tests that may be carried out are those which the inspector considers necessary for the purpose of ascertaining the risk of escape of fish from the fish farm; ascertaining whether fish have escaped from the fish farm; and assessing the measures in place for the containment of fish on the fish farm, the measures in place for preventing the escape of fish from the fish farm, and the measures in place for the recovery of any fish which may escape from the fish farm.

Enforcement

Section 6 – Enforcement notices

16. Subsections (1) and (2) of section 6 provide that the Scottish Ministers may serve an enforcement notice on a person carrying on a business of fish farming in cases where they are satisfied that that person does not have in place satisfactory measures for the purposes of the prevention, control and reduction of parasites or the containment of fish, prevention of escape of fish, or recovery of escaped fish. Subsection (4) provides that such an enforcement notice may require the person on whom the enforcement notice is served to execute such works and take such other steps as Ministers consider necessary for the purposes of the prevention, control and reduction of parasites or the containment of fish, prevention of escape of fish, or recovery of escaped fish.
17. Subsection (3) provides that the Scottish Ministers may serve an enforcement notice on a person carrying on a business of shellfish farming in cases where they are satisfied that that person does not have in place satisfactory measures for the purpose of the prevention, control and reduction of parasites in respect of the shellfish farm. Subsection (5) provides that such an enforcement notice may require the person on whom the enforcement notice is served to execute such works and take such other steps as Ministers consider necessary for the purpose of the prevention, control and reduction of parasites.
18. Subsection (6) requires that an enforcement notice, whether served under subsection (1) or subsection (3), must specify the date by which the requirements specified in the enforcement notice must be fulfilled. Subsection (7) provides that a person on whom an enforcement notice has been served may appeal to the sheriff against the notice, by summary application made before the end of a 7 day period beginning with the day on which the notice is served. Subsection (8) provides that the sheriff may decide any appeal as the sheriff sees fit, and that the decision of the sheriff in the appeal is final. Subsection (9) provides that a person who contravenes an enforcement notice without reasonable excuse is guilty of an offence. Subsection (10) provides that a person who is found guilty of committing such an offence is liable to a fine not exceeding level 4 on the standard scale. This currently equates to a maximum fine of £2,500.
19. Subsection (11) provides that where the Scottish Ministers are satisfied that an enforcement notice is contravened in respect of the prevention, control and reduction of parasites they may authorise an inspector to take any action that Ministers consider necessary to fulfil the requirements of the enforcement notice. Subsection (12) provides for the recovery of expenses reasonably incurred by an inspector in taking action authorised by the Scottish Ministers to fulfil the requirements of the enforcement notice.
20. Subsection (13) permits the serving of an enforcement notice to be publicised as widely, in such manner and in such form as the Scottish Ministers think fit.

Code of practice

Section 7 – Code of practice

21. Section 7 enables the Scottish Ministers to approve, by order, all or part of a code of practice (whether issued by them or by any other person) for the purposes of giving guidance and promoting desirable practices in respect of (a) the prevention, control and reduction of parasites on fish farms and shellfish farms and (b) in respect of fish farms only, the containment of fish, prevention of escape of fish, and recovery of escaped fish. Subsection (3) enables the Scottish Ministers, by order, to modify an approved code or to withdraw approval of an approved code or an approved modification of such a code
22. The term “approved code” is defined in section 12 (Interpretation: Part 1) for the purposes of Part 1 of the Act as meaning a code of practice approved under section 7, including any part or modification of an approved code of practice. The power to make

orders under subsections (1) and (3) of section 7 approving a code, or modifying a code, or withdrawing approval of an approved code or an approved modification of such a code must be exercised by statutory instrument which is subject to annulment in pursuance of a resolution of the Scottish Parliament, by virtue of section 43 (Orders). Subsection (4) of section 7 requires the Scottish Ministers to consult such persons as they consider appropriate before making such an order.

Section 8 – Monitoring and enforcement: code of practice

23. Subsection (1) of section 8 imposes an obligation upon the Scottish Ministers to monitor compliance with any code approved by them under section 7.
24. Subsections (2) and (3) of section 8 provide that the Scottish Ministers may serve a notice on a person carrying on a business of fish farming or shellfish farming where they are satisfied that that person is not complying, or is not likely to comply, with a code approved under section 7 (Code of practice) in a material regard. Such a notice may require the person on whom the notice is served to execute such works and take such other steps as Ministers consider necessary for securing compliance with the approved code in any particular respect (subsection (4)).
25. Subsection (5) of section 8 applies the provisions of subsections (6) to (13) of section 6 (Enforcement notices) to a notice served under subsections (2) and (3) of section 8 in the same way as they apply to enforcement notices served under section 6. Accordingly, notices served under subsections (2) and (3) of section 8 must specify the date by which the requirements specified in them must be fulfilled (section 6(6), as applied); there is a right of appeal against a notice by summary application to the sheriff (section 6(7) and (8), as applied); a person who contravenes a notice served under subsection (2) or (3) of section 8 is guilty of an offence (section 6(9), as applied); a person who is found guilty of committing such an offence is liable to a fine not exceeding level 4 on the standard scale, which currently equates to a maximum fine of £2,500 (section 6(10), as applied); where the Scottish Ministers are satisfied that a notice served under subsection (2) or (3) of section 8 is contravened in respect of the prevention, control and reduction of parasites they may authorise an inspector to take any action that Ministers consider necessary to fulfil the requirements of the notice (section 6(11), as applied); expenses reasonably incurred by an inspector in taking action authorised by the Scottish Ministers to fulfil the requirements of such a notice may be recovered by the Scottish Ministers from the person upon whom the notice was served (section 6(12), as applied); the serving of a notice under subsection (2) or (3) of section 8 may be publicised as widely, in such manner and in such form as the Scottish Ministers think fit (section 6(13), as applied).

Powers of inspectors and offences

Section 9 – Powers of inspectors: entry

26. Subsection (1) of section 9 provides that an inspector may enter any fish farm or shellfish farm for the purpose of ascertaining whether any power conferred on the inspector under Part 1 of the Act should be exercised and for the purpose of the inspector doing anything in pursuance of the exercise of that power. Subsection (2) requires an inspector entering a fish farm or shellfish farm under the power of entry bestowed by subsection (1) to produce evidence of the inspector's authority to act as an inspector, namely the authorisation to act as an inspector given by the Scottish Ministers (see the definition of the term "inspector" given in section 12 (Interpretation: Part 1) for the purposes of Part 1). Subsection (3) requires that any power of entry conferred on an inspector by or under Part 1 of the Act must be exercised at a reasonable hour, unless the inspector considers the case is an urgent one.

Section 10 – Entry: supplementary

27. Subsection (1) of section 10 applies section 10 to any inspector exercising any power of entry conferred on that inspector by or under Part 1 of the Act. Subsection (2) provides that such an inspector may take with that inspector any other persons and any equipment and vehicles which the inspector considers necessary. Subsections (3) and (4) provide that an inspector may require reasonable assistance to be provided to the inspector by the person who carries on the business of fish farming or shellfish farming; by any other person appearing to the inspector to be under the direction or control of the person who carries on the business of fish farming or shellfish farming; and by any other person who appears to that inspector to be concerned with the operation of the fish farm or shellfish farm. Section 11(1) (Offences: general) makes it an offence to fail to comply with a requirement imposed by an inspector under subsection (3) of section 10.

Section 11 – Offences: general

28. Subsection (1) of section 11 provides that it is an offence for a person to fail, without reasonable excuse, to comply with a requirement imposed by an inspector by virtue of Part 1 of the Act or to obstruct an inspector in the exercise of the inspector's powers under that Part. Accordingly, this is the provision which makes it an offence for a person to fail to comply with a requirement imposed by an inspector under section 1(5) (Information about fish farms and shellfish farms) and section 10(3) (Entry: supplementary).

Interpretation of Part 1

Section 12 – Interpretation: Part 1

29. This section provides definitions for certain terms used in Part 1 of the Act.