



# Aquaculture and Fisheries (Scotland) Act 2013

2013 asp 7

## PART 4

### SHELLFISH

#### *Orders as to fisheries for shellfish*

#### **55 Power to make orders as to fisheries for shellfish**

- (1) In section 1 of the Sea Fisheries (Shellfish) Act 1967 (power to make orders as to fisheries for shellfish), in subsection (1), for the words from “shellfish” to “Minister” substitute “shellfish of any kind specified in the order”.
- (2) In section 15 of the Sea Fisheries Act 1968 (amendments of Sea Fisheries (Shellfish) Act 1967)—
  - (a) subsection (2) is repealed,
  - (b) in subsection (3), for “that section” substitute “section 1 of that Act”.

#### **56 Contravention of regulated fishery orders**

- (1) The Sea Fisheries (Shellfish) Act 1967 is amended in accordance with this section.
  - (2) In section 3 (effect of grant of right of regulating a fishery)—
    - (a) after subsection (4) insert—

“(4A) Subsection (4B) applies where an order under section 1 of this Act—

      - (a) confers a right of regulating a fishery for any specified description of shellfish, and
      - (b) imposes restrictions on, or makes regulations respecting, the dredging, fishing for and taking of any specified description of shellfish within the limits of the regulated fishery or any part of it.
- (4B) A person commits an offence if—

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*Status: This is the original version (as it was originally enacted).*

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- (a) the person is found within the limits of, or in the immediate vicinity of, the regulated fishery,
- (b) the person is found there at, or about, a time at which the restrictions imposed or regulations made by the order apply,
- (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 dredging, fishing for and taking shellfish in contravention of the restrictions or regulations, and
- (d) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the person intends to dredge, fish for and take shellfish in contravention of the restrictions or regulations.

(4C) A person who commits an offence under subsection (4B) is liable on summary conviction to a fine not exceeding £50,000.”

- (b) in subsection (5), after “subsection (3)” insert “or (4B)”, and
- (c) in subsection (6), for “Subsection (1) of this section” substitute “This section”.

(3) After section 3 insert—

**“3A Contravention of regulated fishery orders: presumption**

- (1) Subsection (2) applies in proceedings against a person (“the accused”) for an offence under section 3(3) of this Act involving dredging, fishing for and taking shellfish in contravention of restrictions imposed or regulations made by—
  - (a) an order under section 1 of this Act, or
  - (b) the grantee of such an order.
- (2) It is to be presumed that the accused was, or had been, dredging, fishing for and taking shellfish in contravention of the restrictions or regulations if—
  - (a) it is proved that—
    - (i) the accused was found within the limits of, or in the immediate vicinity of, the regulated fishery to which the order relates,
    - (ii) the accused was found there at, or about, a time at which the restrictions or regulations apply, and
    - (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, dredging, fishing for and taking shellfish in contravention of the restrictions or regulations.
- (3) The things are—
  - (a) such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of dredging, fishing for and taking shellfish in contravention of the order,
  - (b) shellfish the dredging, fishing for and taking of which is prohibited by the restrictions or regulations.

- (4) Subsection (2) does not apply if evidence is adduced sufficient to raise an issue as to whether—
- (a) the accused’s presence within the limits of, or in the vicinity of, the regulated fishery to which the order relates was for the purpose of dredging, fishing for and taking shellfish in contravention of the restrictions or requirements, 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 shellfish mentioned in paragraph (b) of that subsection, the shellfish were caught or taken in contravention of the restrictions or requirements.”.

## **57 Enforcement of orders: powers of entry**

- (1) The Sea Fisheries (Shellfish) Act 1967 is amended in accordance with this section.
- (2) After section 4C insert—

### **“4CA Power to enter land**

- (1) For the purposes of exercising the powers conferred by sections 4A to 4C, and of enforcing the restrictions imposed by, or regulations made by, an order under section 1 conferring a right of regulating a fishery, a British sea-fishery officer may at any time enter land (including the foreshore) other than a dwelling house, 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.
- (2) A British sea-fishery officer may—
  - (a) exercise the power of entry under subsection (1) on foot or in a vehicle,
  - (b) when exercising that power, take with the officer—
    - (i) such persons as appear to the officer to be necessary,
    - (ii) any equipment or material.
- (3) The power of entry under subsection (1)—
  - (a) may not be exercised in relation to land in respect of which section 4B confers a power of entry, and
  - (b) is without prejudice to the power of entry conferred by that section.
- (4) A British sea-fishery officer who proposes to exercise the power of entry conferred by subsection (1) must, if so required, produce evidence of the officer’s identity.”.

## (3) In section 4D—

- (a) in subsection (1)—
  - (i) for the words “or 4B(3) or (12)” substitute “, 4B(3) or (12) or 4CA(2)(b)”,
  - (ii) for the words “or 4C” substitute “, 4C or 4CA”,
- (b) in subsection (2)(a), for the words “or 4B” substitute “, 4B or 4CA”,
- (c) after subsection (2) insert—

“(2A) A constable may arrest without warrant any person who the constable reasonably believes is committing or has committed an offence under subsection (2) relating to—

- (a) a failure to comply with a requirement imposed under a power conferred by section 4CA,
- (b) obstructing a British sea-fishery officer in the exercise of such a power.

(2B) Subsection (2A) above is without prejudice to any power of arrest conferred by law apart from that subsection.”.

## (4) In the title to section 4D, for “4C” substitute “4CA”.

## (5) After section 24 insert—

**“24A Crown application: Scotland**

- (1) Section 4CA 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 section 4D(2) in respect of a failure to comply with a requirement under a power conferred by section 4CA 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.
- (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.”.

**58 Power to appoint inspectors before making orders as to fisheries for shellfish**

- (1) In Schedule 1 to the Sea Fisheries (Shellfish) Act 1967 (provisions with respect to making of orders under section 1)—

- (a) in paragraph 4(2), for the words from “may” to “be” substitute “may as soon as reasonably practicable”,
  - (b) in paragraph 6(1), for the words “conveniently may be” substitute “reasonably practicable”.
- (2) The amendment made by subsection (1)(a) does not apply in relation to any application made for an order under section 1 of the Sea Fisheries (Shellfish) Act 1967 before the coming into force of this section.