

SCHEDULE 1

(introduced by section 17(6))

COMMERCIALLY DAMAGING SPECIES: CONTROL SCHEMES

Making a control scheme: procedure

- 1 Where the Scottish Ministers propose to make a control scheme, they must serve on every person who carries on a business of fish farming or shellfish farming on whom the scheme proposes to impose any requirement—
 - (a) a draft of the proposed scheme, and
 - (b) a notice stating that any such person may, within 14 days of the service of the notice, object to the Scottish Ministers in such manner as may be specified in the notice to the draft control scheme or to any provision contained in it.
- 2 If no objection is duly made under paragraph 1, or if all objections so made are withdrawn, the Scottish Ministers may make the control scheme either in the form of the draft control scheme served under that paragraph or, subject to paragraph 4, with modifications.
- 3 If any objection duly made under paragraph 1 is not withdrawn, the Scottish Ministers—
 - (a) must consider the objection, and
 - (b) may make the control scheme either in the form of the draft control scheme served under that paragraph or, subject to paragraph 4, with modifications.
- 4 A control scheme may not be made with any modifications unless—
 - (a) every person served with a copy of the draft control scheme under paragraph 1 has been served with a notice of the proposal to make the modification, and
 - (b) every such person—
 - (i) has either consented to the proposal, or
 - (ii) has not, before the expiry of the period of 14 days beginning with the day of the service of the notice, notified the Scottish Ministers in writing that the person objects to it.

Variation or revocation of a control scheme: procedure

- 5 (1) The Scottish Ministers may—
 - (a) make a scheme varying a control scheme, or
 - (b) revoke a control scheme.(2) The Scottish Ministers may exercise a power under sub-paragraph (1)—
 - (a) on the application of a person who carries on a business of fish farming or shellfish farming on whom the control scheme has imposed any requirement, or
 - (b) even if no such application is made.
- 6 Before making any variation or revocation such as is mentioned in paragraph 5(1), the Scottish Ministers must serve on every person who carries on a business of fish farming or shellfish farming on whom the control scheme has imposed any requirement—
 - (a) a draft of the scheme varying the control scheme or (as the case may be) an intimation of the proposed revocation, and

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- (b) a notice stating that any such person may, within 14 days of the service of the draft scheme or (as the case may be) the intimation, object to the Scottish Ministers in such manner as may be specified in the notice to the variation or revocation of the control scheme.
- 7 If no objection is duly made under paragraph 6, or if all objections so made are withdrawn, the Scottish Ministers may vary or revoke the control scheme (as the case may be).
- 8 If any objection duly made under paragraph 6 is not withdrawn, the Scottish Ministers—
- (a) must consider the objection, and
 - (b) may—
 - (i) make the variation, either in the form of the draft or, subject to paragraph 9, with modifications, or
 - (ii) revoke the control scheme,
 as the case may be.
- 9 A variation of a control scheme may not be made with any modification unless—
- (a) every person served with a copy of the draft scheme by virtue of paragraph 6 has been served with a notice of the proposal to make the modification, and
 - (b) every such person—
 - (i) has either consented to the proposal, or
 - (ii) has not, before the expiry of the period of 14 days beginning with day of the service of the notice, notified the Scottish Ministers in writing that the person objects to it.

Objections

- 10 Notwithstanding anything in paragraph 3 or 8, the Scottish Ministers may—
- (a) require any person who has made an objection to state in writing the grounds for it, and
 - (b) disregard the objection for the purposes of this schedule if they are satisfied that the objection is frivolous.

Making, varying or revoking a control scheme: notices

- 11 On making a control scheme, or on varying or revoking such a scheme, the Scottish Ministers must serve on every person on whom a notice was required to be served under any of the following provisions—
- (a) paragraph 1(b),
 - (b) paragraph 4(a),
 - (c) paragraph 6(b),
 - (d) paragraph 9(a),
- a notice stating that the scheme has been made or (as the case may be) that a variation or revocation of the scheme has been made.

Validity of control schemes

- 12 Subject to paragraph 13, the validity of a control scheme or of any variation or revocation of such a scheme may not at any time be questioned in any proceedings.

Appeals

- 13 (1) Any person who carries on a business of fish farming or shellfish farming at a fish farm or shellfish farm to which a control scheme relates may appeal by way of summary application to a sheriff against—
- (a) a decision of the Scottish Ministers to—
 - (i) make the control scheme,
 - (ii) make a scheme varying the control scheme, or
 - (iii) revoke the control scheme, or
 - (b) the terms or conditions of the control scheme (including such a scheme as varied).
- (2) An appeal under sub-paragraph (1) must be lodged not later than 28 days after the date on which the person making the appeal received a notice under paragraph 11.
- (3) On an appeal under sub-paragraph (1), the sheriff may—
- (a) affirm the control scheme,
 - (b) direct the Scottish Ministers to amend the scheme in such manner as the sheriff may specify,
 - (c) direct the Scottish Ministers to revoke the scheme,
 - (d) make such other order as the sheriff thinks fit.
- (4) A decision of the sheriff on an appeal under sub-paragraph (1) is final except on a point of law.
- (5) An appeal on a point of law against the decision of a sheriff under sub-paragraph (1) lies to the Court of Session only.

SCHEDULE 2

(introduced by section 48)

FORFEITURE UNDER SECTION 46 OR 47

Application of schedule

- 1 This schedule applies where—
- (a) property seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation is being retained by the Scottish Ministers,
 - (b) the Scottish Ministers are satisfied that there are reasonable grounds for believing that the property is liable to forfeiture under section 46 or 47, and
 - (c) any of the following applies—
 - (i) a procurator fiscal has decided not to take proceedings against any person in respect of any offence in relation to the property,
 - (ii) where a fixed penalty notice has been issued in respect of such an offence, the appropriate fixed penalty has been paid, or
 - (iii) any proceedings taken in respect of such an offence have concluded without an order for forfeiture having been made in respect of the property.

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Notice of intended forfeiture

- 2 (1) The Scottish Ministers must serve notice of the intended forfeiture of the property (“notice of intended forfeiture”) on each of the following—
- (a) every person who appears to the Scottish Ministers to have been an owner of the property at the time of its seizure,
 - (b) in the case of property seized on board a vessel, the master, owner and charterer (if any) of the vessel at that time,
 - (c) 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,
 - (d) in any other case, the person (if any) from whom the property was seized.
- (2) The notice of intended forfeiture must set out—
- (a) a description of the property,
 - (b) the grounds of the intended forfeiture,
 - (c) information about how a person may give a notice of claim under this schedule, and
 - (d) the period within which such a notice must be given.
- (3) In a case where—
- (a) the property was seized following an inspection carried out in exercise of the power conferred by section 39, and
 - (b) the Scottish Ministers, after taking reasonable steps to do so, are unable to identify any person as owning the property,
- the reference in sub-paragraph (1) to a requirement to serve notice of intended forfeiture on such a person is to be read as a reference to a requirement to take such steps as the Scottish Ministers think fit to bring the contents of the notice to the attention of persons likely to be interested in it.
- (4) Property may be forfeited or taken as forfeited under this schedule only if—
- (a) the requirements of this paragraph have been complied with in respect of the property, or
 - (b) it was not reasonably practicable for them to be complied with.

Notice of claim

- 3 (1) A person claiming that the property is not liable to forfeiture under section 46 or 47 must serve notice of the claim (a “notice of claim”) on the Scottish Ministers.
- (2) A notice of claim must be served—
- (a) within one month of the day of the serving of the notice of intended forfeiture, or
 - (b) if no such notice has been served, within one month of the date of the seizure of the property.
- (3) A notice of claim must specify the name and address of the claimant.
- (4) In a case in which notice of intended forfeiture was served on different persons on different days, the reference in this paragraph to the day on which that notice was served is a reference—
- (a) in relation to a person on whom the notice of intended forfeiture was served, to the day on which that notice was served on that person, and

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- (b) in relation to any other person, to the day on which notice of intended forfeiture was served on the last person on whom such a notice was served.

Automatic forfeiture in a case where no claim is made

- 4 The property is taken to be forfeited if—
- (a) by the end of the period for the serving of a notice of claim in respect of the property, no notice of claim has been served on the Scottish Ministers, or
 - (b) a notice of claim has been served which does not comply with the requirements of paragraph 3.

Decision whether to apply for order forfeiting property

- 5 (1) Where a notice of claim in respect of the property is duly served in accordance with paragraph 3, the Scottish Ministers must decide whether to make an application to a sheriff for an order forfeiting the property (a “forfeiture application”).
- (2) The decision whether to make such an application must be taken as soon as reasonably practicable after receipt of the notice of claim.

Return of property if no application made to the sheriff

- 6 (1) If, in a case in which a notice of claim has been duly served, the Scottish Ministers decide not to make a forfeiture application in respect of the property, they must return the property to a person appearing to them to be an owner of the property.
- (2) The property must be returned as soon as reasonably practicable after the decision not to make a forfeiture application.

Forfeiture applications

- 7 (1) This paragraph applies if, in a case in which a notice of claim has been duly served, the Scottish Ministers decide to make a forfeiture application in respect of the property.
- (2) A forfeiture application is to be made by way of summary application.
- (3) If the sheriff is satisfied that the property is liable to forfeiture under section 46 or 47, the sheriff may order the forfeiture of the property.
- (4) If the sheriff is not so satisfied, the sheriff must order the return of the property to a person appearing to the sheriff to be entitled to it.

Appeal against sheriff’s decision on forfeiture application

- 8 (1) Either party may appeal against the decision of the sheriff on a forfeiture application to the sheriff principal.
- (2) Where an appeal has been made to the sheriff principal, the property is to be retained by the Scottish Ministers pending final determination of the appeal.

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Effect of forfeiture

- 9 Where property is taken to be forfeited under this schedule or the property's forfeiture is ordered by the sheriff under this schedule, the forfeiture is to be treated as having taken effect as from the time of the seizure of the property.

Disposal of property which is not returned

- 10 (1) This paragraph applies where any property is required to be returned to a person under this schedule.
- (2) If the property is still in the Scottish Ministers' possession after the end of the period of 3 months beginning with the day after the requirement to return it arose, the Scottish Ministers may dispose of it in any manner they think fit.
- (3) The Scottish Ministers may exercise their power under this paragraph to dispose of property only if it is not practicable at the time when the power is exercised to dispose of the property by returning it immediately to the person to whom it is required to be returned.

Provisions as to proof

- 11 (1) In proceedings on a forfeiture application under this schedule in relation to any property, the fact, form and manner of the seizure of the property are to be taken, without further evidence and unless the contrary is shown, to have been as set out in the application.
- (2) In any proceedings, the production of—
- (a) the sheriff's order forfeiting any property under this schedule, or
 - (b) a certified copy of the order purporting to be signed by the sheriff clerk,
- is sufficient evidence of the forfeiture of property by the sheriff under this schedule.

Power to destroy fish before forfeiture

- 12 (1) The Scottish Ministers may destroy any fish which they consider to be liable to forfeiture under section 47 even if the fish are not yet taken to be forfeited under this schedule and their forfeiture has not yet been ordered by the sheriff under this schedule.
- (2) If, in proceedings on a forfeiture application under this schedule, the sheriff is not satisfied that any fish destroyed under this paragraph were liable to forfeiture under section 47, the Scottish Ministers must, if requested to do so, pay to the claimant a sum of money equal to the market value of the fish at the time of their seizure.
- (3) A claimant who accepts a sum of money paid under sub-paragraph (2) has no right of action on account of the seizure, detention or destruction of the fish.
- (4) For the purposes of sub-paragraph (2), the market value of the fish at the time of their seizure is taken to be the average of the prices at which fish of the same kind were sold in the calendar month preceding the time of seizure at the designated auction nearest to the place where the fish were landed.
- (5) In sub-paragraph (4), "designated auction" means a centre for the auction of fish designated by the Scottish Ministers for the purposes of this paragraph.

Power to return shellfish to the sea before forfeiture

- 13 (1) This paragraph applies to any shellfish—
- (a) seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation, and
 - (b) which the officer considers to be liable to forfeiture under section 47.
- (2) If the conditions in sub-paragraph (3) are met, the officer may return the shellfish to the sea even though the shellfish are not yet taken to be forfeited under this schedule and their forfeiture has not yet been ordered by the sheriff under this schedule.
- (3) The conditions are that—
- (a) the shellfish are alive, and
 - (b) the officer considers it appropriate to return them to the sea to allow their onward growth to maturity.
- (4) Sub-paragraphs (2) to (5) of paragraph 12 apply in a case where shellfish have been returned to the sea under this paragraph as they apply where fish have been destroyed under paragraph 12, but as if—
- (a) references to the fish were references to the shellfish,
 - (b) references to the destruction of the fish under paragraph 12 were references to the return of the shellfish to the sea under this paragraph, and
 - (c) the reference to the place where the fish were landed were a reference to the place where the shellfish would have been landed had they not been returned to the sea.