

SCHEDULES

SCHEDULE 8

POWERS TO MAKE FURTHER PROVISION: DEVOLVED AUTHORITIES

PART 1

SCOTTISH MINISTERS

Power to make provision about fisheries, aquaculture etc

- 1 (1) The Scottish Ministers may by regulations make provision—
- (a) for the purpose of implementing an international obligation of the United Kingdom relating to fisheries, fishing or aquaculture,
 - (b) for a conservation purpose (see sub-paragraph (2)), or
 - (c) for a fish industry purpose (see sub-paragraph (3)).
- (2) “A conservation purpose” means any of the following—
- (a) the purpose of conserving, improving or developing marine stocks;
 - (b) the purpose of protecting the marine and aquatic environment from the effects of fishing or aquaculture, or of related activities;
 - (c) the purpose of protecting or improving the health of any fish or other aquatic animal.
- (3) “A fish industry purpose” means any of the following—
- (a) the purpose of promoting or developing commercial fish or aquaculture activities;
 - (b) the purpose of improving the traceability of fishery products;
 - (c) the purpose of disseminating information about fishery products.
- (4) Except so far as they are regional fisheries management regulations, regulations under sub-paragraph (1) may only include provision about—
- (a) the quantity of sea fish that may be caught;
 - (b) the amount of time that fishing boats may spend at sea;
 - (c) the landing of sea fish;
 - (d) bycatch;
 - (e) catching, landing or selling sea fish that are below a certain size;
 - (f) setting and enforcing targets relating to marine stocks;
 - (g) the design of sea fishing equipment;
 - (h) the use of sea fishing equipment;
 - (i) the retrieval of lost or discarded sea fishing equipment;
 - (j) methods of sea fishing;
 - (k) the processing of sea fish;

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- (l) the use to which the Scottish Ministers may put information obtained in the exercise of their functions relating to fisheries or aquaculture;
 - (m) the functions, objectives or regulation of producer organisations or inter-branch organisations;
 - (n) the marketing of fishery products (including labelling);
 - (o) keeping, disclosing or publishing accounts, records or other documents or information by persons involved in—
 - (i) commercial fish or aquaculture activities, or
 - (ii) monitoring, or enforcing, compliance with the regulation of commercial fish or aquaculture activities;
 - (p) the use in aquaculture, or transport, of aquatic organisms that are members of an alien species or a locally absent species;
 - (q) monitoring, or enforcing, compliance with the regulation of any of matters mentioned in the preceding paragraphs of this sub-paragraph.
- (5) In sub-paragraph (4) “regional fisheries management regulations” means regulations that give effect (or change the way in which effect is given) to a requirement imposed on, or a recommendation made to, the United Kingdom (whether directly or indirectly)—
- (a) by, or pursuant to, a regional fisheries management agreement, or
 - (b) by a regional fisheries management organisation.
- (6) Without prejudice to the generality of section 51(1)(b), regulations under this paragraph may make different provision in relation to—
- (a) different descriptions of sea fish or other animal,
 - (b) different descriptions of fishing boat, or
 - (c) different areas of the sea or inland waters.

Paragraph 1: interpretation

- 2 (1) In paragraph 1 and this paragraph—
- “regional fisheries management agreement” means an international agreement (including an international agreement to which the United Kingdom is not a party) the sole or main purpose of which is the conservation or management of—
- (a) straddling stocks,
 - (b) stocks of highly migratory species, or
 - (c) any other marine stocks;
- “regional fisheries management organisation” means an organisation (including an organisation of which the United Kingdom is not a member) established pursuant to a regional fisheries management agreement;
- “sea fishing equipment” means—
- (a) fishing nets and any other equipment used in the course of sea fishing (including, for example, equipment used to navigate, or to deter animals that are not intended to be caught), or
 - (b) equipment used to monitor sea fishing;
- “traceability”, in relation to fishery products, means the ability of any person to discover information about how, where or when the fishery products were—
- (a) caught, harvested or made, or

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- (b) transported, stored or sold.
- (2) In the definition of “regional fisheries management agreement” in subparagraph (1)—
 - (a) “the high seas” has the same meaning as in the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) (“UNCLOS”);
 - (b) “straddling stocks” means stocks to which Article 63(2) of UNCLOS (stocks both in, and in area beyond and adjacent to, an EEZ) applies;
 - (c) “highly migratory species” means a species listed in Annex 1 to UNCLOS.
- (3) For the purposes of paragraph 6, an aquatic organism is a member of an “alien species” if—
 - (a) it is located outside the known natural range, and the area of the natural dispersal potential, of the species or subspecies of which it is a member,
 - (b) it is a polyploid organism, or
 - (c) it is a member of a fertile artificially hybridised species or subspecies.
- (4) For the purposes of paragraph 6, an aquatic organism is a member of a “locally absent species” if it is located—
 - (a) within the known natural range of the species or subspecies of which it is a member, and
 - (b) in an area in which that species or subspecies is absent (in a wild state).

Power to make provision about aquatic animal diseases

- 3 (1) The Scottish Ministers may by regulations make provision for the purpose of monitoring, controlling, preventing or eradicating diseases of fish or other aquatic animals.
- (2) Regulations under this paragraph may, in particular, include provision regulating the importation, exportation, movement, storage or handling of—
 - (a) fish or other aquatic animals;
 - (b) products derived from fish or other aquatic animals;
 - (c) any other thing that the Scottish Ministers consider may carry, or otherwise affect the prevalence of, a disease of fish or other aquatic animals.

Scope of regulations under paragraph 1 or 3

- 4 (1) Regulations under paragraph 1 or 3 may—
 - (a) confer a function, including a function involving the exercise of a discretion, on any person, or
 - (b) impose fees.
- (2) Regulations under paragraph 1 or 3 may create a criminal offence, but not one punishable with imprisonment.
- (3) Regulations under paragraph 1 or 3 may only include provision which would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.
- (4) Regulations under paragraph 1 or 3 may not include provision modifying a function of the Secretary of State, or of any of the sea fish licensing authorities, under any of the provisions of sections 14 to 18 or Schedule 3 (licensing of fishing boats).

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- (5) The reference in sub-paragraph (4) to “modifying” a function of a person under an enactment includes—
 - (a) abolishing the function;
 - (b) changing the purpose or objective for which the function is exercised;
 - (c) changing the conditions under which the function is exercised.
- (6) The power to make regulations under paragraph 1 or 3 is capable of being exercised so as to amend, repeal or revoke any enactment (apart from sections 36 to 42, this Schedule, and section 52 so far as it applies for the purposes of those enactments).
- (7) In sub-paragraph (6) “enactment” has the same meaning as in the European Union (Withdrawal) Act 2018.

Procedural requirements

- 5 (1) Before making regulations under paragraph 1 or 3 the Scottish Ministers must consult—
 - (a) the Secretary of State,
 - (b) the Welsh Ministers,
 - (c) the Northern Ireland department, and
 - (d) such other persons likely to be affected by the regulations as the Scottish Ministers consider appropriate.
- (2) Regulations under paragraph 1 or 3 are subject to the affirmative resolution procedure if they contain provision—
 - (a) amending or repealing primary legislation;
 - (b) imposing fees;
 - (c) creating a criminal offence or increasing the penalty for, or widening the scope of, a criminal offence; or
 - (d) conferring functions on, modifying functions of, or otherwise relating to the regulation of—
 - (i) a producer organisation in the United Kingdom, or
 - (ii) an inter-branch organisation in the United Kingdom.
- (3) Subject to sub-paragraph (2) regulations under paragraph 1 or 3 are subject to the negative resolution procedure.