



Aquaculture and Fisheries (Scotland) Act 2013

2013 asp 7

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 15th May 2013 and received Royal Assent on 18th June 2013

An Act of the Scottish Parliament to make provision about fish farming and shellfish farming; about salmon fisheries and freshwater fisheries; about sea fisheries; about shellfish waters and fisheries for shellfish; about charging in connection with functions relating to fish farming, shellfish farming, salmon fisheries, freshwater fisheries and sea fisheries; about fixed penalty notices for offences under certain aquaculture, fisheries and other marine legislation; and for connected purposes.

PART 1

AQUACULTURE

CHAPTER 1

FISH FARM MANAGEMENT

1 Fish farm management agreements and statements

- (1) The Aquaculture and Fisheries (Scotland) Act 2007 is amended in accordance with this section.
- (2) After section 4 insert—

“Fish farm management agreements and statements

4A Fish farm management agreements and statements

- (1) A person who carries on a business of fish farming at a fish farm located within a farm management area must—
 - (a) be party to a farm management agreement, or prepare and maintain a farm management statement, in relation to the fish farm, and

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- (b) ensure that the fish farm is managed and operated in accordance with the agreement or (as the case may be) statement.
- (2) For the purposes of this section, a “farm management agreement” is an agreement—
 - (a) between two or more persons who carry on a business of fish farming at fish farms located in a farm management area, and
 - (b) which contains provision about the matters specified in subsection (4).
- (3) For the purposes of this section, a “farm management statement” is a statement—
 - (a) prepared and maintained by a person who—
 - (i) carries on a business of fish farming at a fish farm located in a farm management area, and
 - (ii) is not, in relation to that fish farm, party to a farm management agreement, and
 - (b) which contains provision about the matters specified in subsection (4).
- (4) The matters referred to in subsections (2)(b) and (3)(b) are—
 - (a) a description of the farm management area and the fish farm or farms to which the agreement or statement applies,
 - (b) arrangements for—
 - (i) fish health management,
 - (ii) management of parasites,
 - (iii) the movement of live fish on and off the farms,
 - (iv) the harvesting of fish,
 - (v) fallowing of the farms after harvesting,
 - (c) review of the agreement or statement at least every 2 years,
 - (d) in the case of a farm management agreement, arrangements for persons to become, or cease to be, parties to the agreement.
- (5) In this section—
 - the “Code of Practice” means the document called the Code of Good Practice for Scottish Finfish Aquaculture as issued and revised from time to time by the body known as the Code of Good Practice Management Group,
 - “farm management area” means an area specified as such in the Code of Practice.
- (6) The Scottish Ministers may by order modify the definition of the Code of Practice in subsection (5) so as to—
 - (a) substitute a reference to another document for the one for the time being referred to in that definition,
 - (b) substitute a reference to another body for the one for the time being referred to in that definition.
- (7) An order under subsection (6) may—
 - (a) include incidental, supplemental, consequential, transitional, transitory or saving provision,

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- (b) modify any enactment, instrument or document.

4B Inspections: farm management agreements and statements

- (1) An inspector may carry out an inspection of any fish farm to which section 4A(1) applies for the purpose of ascertaining whether that section is being complied with.
- (2) In particular, an inspection under subsection (1) may include—
 - (a) taking samples (including samples of fish or material from fish),
 - (b) examining, and taking copies of, documents or records.
- (3) An inspector may arrange for the carrying out of such tests as the inspector considers necessary, using samples taken during an inspection under subsection (1), for the purpose mentioned in subsection (1)."
- (3) In section 6 (enforcement notices), for subsection (1) substitute—
 - "(1) Where the Scottish Ministers are satisfied that a person who carries on a business of fish farming—
 - (a) does not have satisfactory measures in place for any of the purposes mentioned in subsection (2), or
 - (b) in relation to a fish farm to which section 4A(1) applies, has failed or is failing to comply with that section,
 the Scottish Ministers may serve a notice ("an enforcement notice") on the person."
- (4) In section 43(3) (orders subject to affirmative procedure), in paragraph (a), after "section" insert " 4A(6) or ".

Commencement Information

II [S. 1](#) in force at 16.9.2013 by [S.S.I. 2013/249](#), [art. 2](#)

2 Escapes, and obtaining samples, from fish farms

- (1) The Aquaculture and Fisheries (Scotland) Act 2007 is amended in accordance with this section.
- (2) In section 5 (inspections: containment and escape of fish)—
 - (a) in subsection (2), after paragraph (b) insert—
 - "(ba) ascertaining the origin of fish known or believed to have escaped from the fish farm or any other fish farm,"
 - (b) in subsection (3), in paragraph (a), after "equipment" insert " , fish or material from fish ".
- (3) After section 5 insert—

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“Sampling

5A Obtaining samples from fish farms

- (1) An inspector may take samples of fish, or material from fish, on a fish farm for any of the purposes mentioned in subsection (3).
- (2) An inspector may require a person who carries on a business of fish farming to provide the inspector with samples of fish, or material from fish, on the fish farm for a purpose mentioned in subsection (3).
- (3) The purposes are—
 - (a) assisting any investigations into escapes of fish from fish farms that may require to be carried out,
 - (b) analysing the samples mentioned in subsections (1) and (2) for scientific or other research,
 - (c) assessing the impact of—
 - (i) the operations of fish farms on the environment,
 - (ii) escapes of fish from fish farms on stocks of fish other than those on fish farms, and
 - (d) developing methods of tracing the origins of fish that escape from fish farms.
- (4) This section is without prejudice to sections 4B and 5.”.

Commencement Information

I2 [S. 2](#) in force at 16.9.2013 by [S.S.I. 2013/249](#), [art. 2](#)

CHAPTER 2

FISH FARMING: EQUIPMENT AND WELLBOATS

Equipment

3 Technical requirements for equipment used in fish farming

- (1) The Scottish Ministers may, for a purpose mentioned in subsection (2), by regulations—
 - (a) prescribe technical requirements for equipment to be used for or in connection with fish farming,
 - (b) impose requirements on fish farm operators in relation to the training of their employees or agents in connection with the installation, maintenance or operation of equipment for which requirements are prescribed under paragraph (a), and
 - (c) make provision for ensuring compliance with the requirements prescribed or imposed by the regulations.

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- (2) The purposes are—
- (a) the containment of fish,
 - (b) the prevention of escape of fish,
 - (c) the prevention, control or reduction of parasites, pathogens or diseases.
- (3) Regulations under subsection (1) may, in particular—
- (a) prescribe requirements as to the design, construction (including the materials used in construction), manufacture, installation, maintenance or size of equipment,
 - (b) provide for the appointment or authorisation of persons (“inspectors”) to inspect equipment and records for the purpose of ensuring compliance with the regulations,
 - (c) for that purpose, confer on inspectors—
 - (i) powers of entry, search and seizure,
 - (ii) powers to obtain information or evidence,
 - (d) impose requirements on fish farm operators, or their employees or agents, as to—
 - (i) the provision of information to inspectors,
 - (ii) allowing access by inspectors, and
 - (iii) cooperation with inspectors,
 - (e) confer powers on inspectors to impose such requirements,
 - (f) impose requirements on fish farm operators, or their employees or agents, as to—
 - (i) the keeping of records in relation to equipment and the making of those records available for inspection,
 - (ii) the keeping of records in relation to training provided or undertaken in pursuance of any requirement imposed under subsection (1)(b) and the making of those records available for inspection,
 - (iii) the notification or reporting of failures in equipment,
 - (g) create criminal offences in relation to failures to comply with the regulations and make other provision for dealing with such offences, including—
 - (i) the provision of defences,
 - (ii) evidential matters,
 - (h) provide for other sanctions for dealing with such failures,
 - (i) provide for procedures (including appeals) for enforcing compliance with the regulations,
 - (j) make different provision for different types of fish farming and different species of fish.
- (4) Regulations under subsection (1) may prescribe or impose requirements—
- (a) by reference to a document published by or on behalf of the Scottish Ministers or such other person, or person of such description, as is specified in the regulations, or
 - (b) by reference to the approval or satisfaction of such person, or person of such description, as is specified in the regulations.
- (5) Where regulations under subsection (1) create a criminal offence, they must provide for the offence to be—
- (a) triable summarily, and