



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”.

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—

“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).

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- (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.”.

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.
- (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,

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- (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
 - (b) punishable by a fine not exceeding level 4 on the standard scale.
- (6) Regulations under subsection (1) may provide for continuing offences and for any such offences to be punishable by a daily or other periodic fine of such amount as is specified in the regulations.
- (7) Sanctions provided for under subsection (3)(h) may include suspension or revocation of any authorisations required by fish farm operators to operate as such.
- (8) In this section, “fish farm operators” means persons carrying on a business of fish farming.

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Wellboats

4 Meaning of “wellboat”

- (1) In this Chapter, “wellboat” means a vessel that contains a tank or well for holding water (including sea water)—
 - (a) into which live farmed fish may be taken, and
 - (b) in which the fish may be subsequently kept, for a purpose mentioned in subsection (2).
- (2) The purposes are—
 - (a) the transportation of farmed fish,
 - (b) the storage of farmed fish,
 - (c) the slaughter of farmed fish,
 - (d) the treatment of farmed fish in connection with health, parasites, pathogens or diseases,
 - (e) the grading of farmed fish.
- (3) For the purposes of this section, it is irrelevant whether or not the farmed fish remain alive in the course of any activity mentioned in subsection (2).
- (4) In this section—

“farmed fish” means fish produced by fish farming, and

“grading”, in relation to farmed fish, means separating and sorting the fish according to size.

5 Control and monitoring of operations of wellboats

- (1) The Scottish Ministers may by regulations make provision for or about controlling and monitoring the operations of any wellboat in Scotland.
- (2) Regulations under subsection (1) may, in particular, include provision for or about—
 - (a) the measures to be taken to prevent, reduce, remove or otherwise control the risk of the spread of parasites, pathogens or diseases as a result of wellboat operations,
 - (b) the installation of such equipment, or types of equipment, as may be specified—
 - (i) to prevent, reduce, remove or otherwise control such a risk,
 - (ii) to enable compliance with the regulations to be monitored,
 - (c) the reporting to the Scottish Ministers of such matters as may be specified.
- (3) Regulations under subsection (1) may impose requirements on, and only on—
 - (a) the master of a wellboat,
 - (b) an owner of a wellboat,
 - (c) a charterer of a wellboat.
- (4) Regulations under subsection (1) may make different provision for—
 - (a) different descriptions of wellboat,
 - (b) different operations,
 - (c) different species of fish,
 - (d) different periods of time.

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- (5) A person commits an offence if the person—
 - (a) acts in contravention of regulations under subsection (1),
 - (b) fails to take any action required of that person by such regulations, or
 - (c) otherwise fails to comply with any requirement imposed on that person by such regulations.
- (6) No proceedings may be taken or continued against a person for an offence under subsection (5) in respect of a matter in relation to which an enforcement notice under section 6 has been served.
- (7) It is a defence for a person charged with an offence under subsection (5)(b) or (c) to show that the person had a reasonable excuse for failing to take any action or (as the case may be) to comply with any requirement mentioned in that subsection.
- (8) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (9) In this section, “specified” means specified in regulations made under subsection (1).

6 Enforcement notices

- (1) This section applies where the Scottish Ministers are satisfied that a person has failed or is failing to comply with any requirement imposed on that person by regulations under section 5(1).
- (2) The Scottish Ministers may serve a notice (an “enforcement notice”) on the person.
- (3) The enforcement notice must specify—
 - (a) the grounds for the service of the notice,
 - (b) the action that the person on whom it is served is required to take in order to ensure compliance with the regulations, and
 - (c) the date by which that action is to be taken, which must be no earlier than 14 days after the day on which the notice is served.
- (4) The Scottish Ministers may publicise the serving of an enforcement notice; and they may do so to such extent, in such manner and in such form as they think fit.
- (5) A person on whom an enforcement notice has been served may appeal by way of summary application to a sheriff against the notice.
- (6) An appeal under subsection (5) must be made before the expiry of the period of 7 days beginning with the day on which the notice is served.
- (7) Where an appeal is made under subsection (5), the enforcement notice has no effect until the appeal is withdrawn or finally determined.
- (8) In an appeal under subsection (5)—
 - (a) the sheriff may make such order as the sheriff thinks appropriate, and
 - (b) the sheriff’s decision is final.
- (9) If the appeal is not upheld, the date by which the action specified in the notice is to be taken is such date as the sheriff may specify in the order disposing of the appeal.
- (10) A person on whom an enforcement notice has been served commits an offence if the person fails to comply with the requirements of the notice.

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- (11) It is a defence for a person charged with an offence under subsection (10) to show that the person had a reasonable excuse for failing to comply with such requirements.
- (12) A person who commits an offence under subsection (10) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

7 Marine enforcement officers' functions

- (1) For the purpose of enforcing regulations under section 5(1), a marine enforcement officer has—
 - (a) the common enforcement powers conferred by Part 7 of the Marine (Scotland) Act 2010,
 - (b) the power conferred by section 150 of that Act (power to require information relating to certain substances and objects),
 - (c) the power conferred by subsection (2), and
 - (d) the powers conferred by section 8.
- (2) Where the requirements of an enforcement notice under section 6 have not been complied with, a marine enforcement officer may take such action as the officer considers necessary to fulfil the requirements.
- (3) Sections 151 to 155 of the Marine (Scotland) Act 2010 (duties and liabilities of, and offences in relation to, marine enforcement officers) have effect as if—
 - (a) any reference to a power conferred by Part 7 of that Act included a reference to—
 - (i) such a power as applied by subsection (1),
 - (ii) the power conferred by subsection (2), and
 - (iii) the powers conferred by section 8, and
 - (b) any reference to a marine enforcement officer's functions under that Act included a reference to—
 - (i) such functions as applied by subsection (1),
 - (ii) a marine enforcement officer's function under subsection (2), and
 - (iii) a marine enforcement officer's functions under section 8.
- (4) The powers which a marine enforcement officer has for the purposes of enforcing regulations under section 5(1) may be exercised in the Scottish marine area and in any other part of Scotland.
- (5) A marine enforcement officer may take action as mentioned in subsection (2) whether or not proceedings have been taken for an offence under section 6(10).
- (6) The Scottish Ministers may recover any expenses reasonably incurred by a marine enforcement officer in taking action as mentioned in subsection (2) from the person on whom the enforcement notice was served.
- (7) In this section, "Scottish marine area" has the same meaning as in section 1 of the Marine (Scotland) Act 2010.

8 Power to detain wellboats in connection with court proceedings

- (1) This section applies where—

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- (a) a marine enforcement officer has reasonable grounds for suspecting that an offence under section 5(5) has been committed by the master, an owner or a charterer of a wellboat (referred to as “A”), and
 - (b) the officer reasonably believes that—
 - (i) if proceedings are taken against A for the offence, there is a real risk that A will not attend court unless the wellboat is detained under this section, or
 - (ii) if A is convicted of the offence and the court by or before which A is convicted imposes a fine on A, it is likely that the court will order the vessel to be detained.
- (2) Where this section applies, a marine enforcement officer may—
- (a) take, or arrange for another person to take, the wellboat and its crew to the port that appears to the officer to be the nearest convenient port, or
 - (b) require any person who is for the time being in charge of the wellboat to take it and its crew to that port.
- (3) When the wellboat has been taken to port, the officer may—
- (a) detain it there, or
 - (b) require the person for the time being in charge of it to do so.
- (4) A marine enforcement officer who detains a wellboat under this section must, if it is reasonably practicable to do so, serve a notice on the person who is for the time being in charge of the wellboat.
- (5) The notice must state—
- (a) the reasons for detaining the wellboat, and
 - (b) the circumstances in which the wellboat may be released.

9 Release of wellboat detained under section 8

- (1) This section applies where a wellboat is being detained under section 8.
- (2) The wellboat ceases to be detained under that section if one of the following things occurs—
- (a) the notice of detention is withdrawn,
 - (b) a sheriff orders the release of the wellboat under section 10,
 - (c) any proceedings taken against the master, owner or charterer of the wellboat have concluded,
 - (d) the court referred to in section 8(1)(b)(ii) exercises any power it has to order the wellboat to be detained.
- (3) A notice of detention is withdrawn by the service by a marine enforcement officer of a further notice on the person who is for the time being in charge of the wellboat, stating that the wellboat is released.
- (4) If any of the grounds of release mentioned in subsection (5) applies, then any notice of detention must be withdrawn as soon as possible.
- (5) The grounds of release are—
- (a) that a procurator fiscal has decided not to take any proceedings against the master, owner or charterer of the wellboat in respect of any offence in relation to which the wellboat was detained,

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- (b) where a fixed penalty notice has been issued in respect of such an offence, that the appropriate fixed penalty has been paid,
- (c) that there are no grounds for believing that any person referred to in paragraph (a) against whom proceedings have been, or may be, taken will fail to attend court,
- (d) that there are no grounds for believing that the court referred to in section 8(1)(b)(ii) will order the wellboat to be detained.

(6) In this section—

“appropriate fixed penalty” has the meaning given in section 27(2) of the Aquaculture and Fisheries (Scotland) Act 2007 (amount and payment of fixed penalty),

“fixed penalty notice” means a fixed penalty notice under section 25(1) of that Act (issue of fixed penalty notices),

“notice of detention” means a notice served under section 8(4).

10 Power of sheriff to order release of wellboats

- (1) This section applies where a wellboat is being detained under section 8.
- (2) If, on an application to a sheriff by the master, an owner or a charterer of the wellboat, the sheriff is satisfied as to either of the matters mentioned in subsection (4), the sheriff may order that the wellboat be released.
- (3) An application under subsection (2) is to be made by way of summary application.
- (4) Those matters are that—
 - (a) the continued detention of the wellboat under section 8 is not necessary to secure that the master, an owner or a charterer of the wellboat will attend court, or
 - (b) there are no grounds for believing that the court referred to in subsection (1)(b)(ii) of that section will order the vessel to be detained.

CHAPTER 3

COMMERCIALLY DAMAGING SPECIES

Orders relating to commercially damaging species

11 Specification of commercially damaging species

- (1) The Scottish Ministers may, for the purposes of this Chapter, by order specify as a commercially damaging species—
 - (a) a species of fish or shellfish,
 - (b) any other species of animal,
 - (c) a species of plant.
- (2) The Scottish Ministers may make an order under subsection (1) in relation to a species only if they consider that the species—

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- (a) if not controlled, would be likely to have a significant adverse impact on the economic or commercial interests of a person who carries on a business of fish farming or shellfish farming, and
- (b) is itself of little or no commercial value.

12 Movement of species, etc.

- (1) The Scottish Ministers may by order make provision for or about the prohibition or control of the movement of—
 - (a) any commercially damaging species that is present, or suspected of being present, in any body of water,
 - (b) any other species of animal or plant the movement of which may be associated with the movement of such a commercially damaging species,
 - (c) any equipment or other material used for or in connection with fish farming or shellfish farming, the movement of which may be so associated,
 - (d) water in which a commercially damaging species, or a species mentioned in paragraph (b), is present or suspected of being present.
- (2) An order under subsection (1) may—
 - (a) designate an area in respect of which any prohibition or control of movement applies,
 - (b) make provision in relation to the enforcement of the provisions of the order, including provision for the issue of notices imposing requirements and the action that may be taken in cases where such notices are not complied with,
 - (c) make provision in relation to appeals against such notices or other actions taken in connection with the enforcement of the provisions of the order,
 - (d) where the movement of—
 - (i) a species,
 - (ii) equipment or other material, or
 - (iii) water in which a species is present or suspected of being present,is controlled by the order, specify conditions or requirements in respect of such movement (including conditions that must be satisfied before such movement is permitted),
 - (e) make different provision for—
 - (i) different types of commercially damaging species,
 - (ii) different types of animal or plant as mentioned in paragraph (b) of subsection (1),
 - (iii) different types of equipment or other material as mentioned in paragraph (c) of that subsection.
- (3) A person commits an offence if the person—
 - (a) acts in contravention of an order under subsection (1),
 - (b) fails to take any action required of the person by such an order, or
 - (c) otherwise fails to comply with any requirement imposed on the person by such an order.
- (4) It is a defence for a person charged with an offence under subsection (3)(b) or (c) to show that the person had a reasonable excuse for failing to take the action or (as the case may be) to comply with any requirement mentioned in that subsection.

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- (5) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

13 Orders under section 12(1): samples and surveillance

- (1) An order under section 12(1) may include provision for or about—
- (a) the taking of samples of any fish from a fish farm, or shellfish from a shellfish farm, by a person appointed by the Scottish Ministers (an “appointed person”),
 - (b) the taking of samples of material from any such fish or shellfish by an appointed person,
 - (c) the analysis of such fish or shellfish, or such material, by an appointed person for the purposes of ascertaining whether a commercially damaging species is present on the fish farm or shellfish farm,
 - (d) the powers of an appointed person, including powers to—
 - (i) enter any land, fish farm or shellfish farm,
 - (ii) enter any premises (other than a dwelling house) associated with the management or operation of a fish farm or shellfish farm,
 - (iii) require the operator of a fish farm or shellfish farm to provide the appointed person with samples such as are mentioned in paragraph (a) or (b),
 - (e) the size of any sample such as is mentioned in either of those paragraphs.
- (2) Subsection (3) applies to an order under section 12(1) that controls the movement of fish or shellfish that are produced by fish farming or shellfish farming.
- (3) The order may include provision for or about—
- (a) requiring a person who carries on a business of fish farming or shellfish farming to carry out a programme of surveillance of—
 - (i) the fish or shellfish the movement of which is controlled by the order,
 - (ii) any other animal, or any plant, specified in the order that is present at the place to which the fish or shellfish mentioned in sub-paragraph (i) are to be, or have been, moved,
 - (iii) such conditions of that place as may be specified in the order,
 - (b) the carrying out by a person appointed by the Scottish Ministers of such a programme of surveillance,
 - (c) the powers of a person so appointed, including powers to enter—
 - (i) any land, fish farm or shellfish farm,
 - (ii) any premises (other than a dwelling house) associated with the operation or management of a fish farm or shellfish farm,
 - (d) the matters which such a programme of surveillance is to address, including any risks associated with the movement of the fish or shellfish controlled by the order.
- (4) An order under section 12(1) which includes provision conferring a power such as is mentioned in subsection (1)(d)(i) or (ii) or subsection (3)(c) must provide—
- (a) for the power to be exercised at a reasonable hour, unless the person exercising it considers the case is one of urgency, and
 - (b) for any person who proposes to exercise the power to produce, if so required, evidence of the person’s identity and appointment.

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14 Offences relating to persons appointed under section 13

- (1) A person commits an offence if the person—
 - (a) fails to comply with a requirement imposed by a person appointed by virtue of subsection (1)(a) or (3)(b) of section 13, or
 - (b) wilfully obstructs such a person in the exercise of a power conferred by an order under section 12(1).
- (2) It is a defence for a person charged with an offence under subsection (1)(a) to show that the person had a reasonable excuse for the failure.
- (3) A person who commits an offence under subsection (1)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) A person who commits an offence under subsection (1)(b) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a fine.

15 Notification of presence of commercially damaging species

- (1) Any person who carries on a business of fish farming or shellfish farming at a fish farm or shellfish farm must notify the Scottish Ministers as soon as reasonably practicable after the person becomes aware of, or suspects, the presence of a commercially damaging species on the fish farm or shellfish farm.
- (2) Subsection (1) applies to any person who is employed, or acts as an agent, in connection with the operation of a fish farm or shellfish farm as it applies to a person mentioned in that subsection; but notification under this subsection need not be given if it has been given under subsection (1).
- (3) Notification under subsection (1) or (2) must contain the following—
 - (a) where the fish farm or shellfish farm is authorised as an aquaculture production business under regulation 6 of the Aquatic Animal Health (Scotland) Regulations 2009 ([S.S.I. 2009/85](#)), the name and number of the site where the commercially damaging species is present or suspected of being present,
 - (b) the name and contact details of—
 - (i) the person providing the notification, and
 - (ii) the person carrying on the business of fish farming or shellfish farming at the fish farm or shellfish farm,
 - (c) the grid reference on the ordnance map of the fish farm or shellfish farm, or part of such farm, where the commercially damaging species is present or is suspected of being present,
 - (d) the type of commercially damaging species (if known),
 - (e) the date on which the person providing the notification first became aware of, or suspected, the presence of the commercially damaging species,
 - (f) the age in months of the commercially damaging species (if known), and
 - (g) the stage of growth of the commercially damaging species (if known).
- (4) A person who fails to give a notification in accordance with subsection (1) or (2) commits an offence.

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- (5) It is a defence for a person charged with an offence under subsection (4) to show that the person had a reasonable excuse for failing to give the notification.
- (6) A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Control

16 Control agreements

- (1) This section applies where the Scottish Ministers are satisfied that a commercially damaging species is present on a fish farm or shellfish farm.
- (2) The Scottish Ministers must form a preliminary view as to whether and, if so, what measures should be taken to—
 - (a) remove the species from,
 - (b) reduce the incidence of the species on,
 - (c) prevent the spread of the species beyond, or
 - (d) otherwise control the species on,
 the fish farm or shellfish farm.
- (3) Where the Scottish Ministers form a preliminary view under subsection (2) that measures should be taken, they must—
 - (a) serve notice on the person who carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm of the preliminary view, and
 - (b) consult the person in order to secure agreement—
 - (i) that measures require to be taken,
 - (ii) as to what measures require to be taken, and within what time limit,
 - (iii) as to who is to take such measures, and
 - (iv) as to such other matters as appear to the Scottish Ministers to be necessary for the purposes of such an agreement.
- (4) Where agreement is reached on the matters mentioned in subsection (3)(b), the Scottish Ministers must prepare an agreement (a “control agreement”) specifying—
 - (a) the parties to it,
 - (b) the measures which are to be taken in relation to the commercially damaging species,
 - (c) which of those measures are to be taken—
 - (i) by the person who for the time being carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm, and
 - (ii) by the Scottish Ministers, and
 - (d) the time limits within which any measures specified under paragraph (c) are to be taken.
- (5) A control agreement may specify different measures to be taken in respect of different fish farms or shellfish farms.
- (6) The Scottish Ministers must send a copy of the control agreement to the person who for the time being carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm.

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- (7) The person who for the time being carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm must take such measures as the agreement may require of that person in accordance with its provisions.
- (8) The Scottish Ministers must, at least once in every 18 month period, review a control agreement for the purpose of assessing compliance with its provisions.

17 Control schemes

- (1) Subsection (2) applies where the Scottish Ministers have served a notice under section 16(3)(a) in relation to a commercially damaging species that is present on a fish farm or shellfish farm, and—
 - (a) either—
 - (i) the Scottish Ministers are satisfied that it is not possible to secure a control agreement or that a control agreement is not being carried out, or
 - (ii) 6 weeks have elapsed since the Scottish Ministers served the notice and no agreement has been reached on the matters mentioned in section 16(3)(b), and
 - (b) the Scottish Ministers continue to have the view that measures should be taken to—
 - (i) remove the species from,
 - (ii) reduce the incidence of the species on,
 - (iii) prevent the spread of the species beyond, or
 - (iv) otherwise control the species on,the fish farm or shellfish farm.
- (2) The Scottish Ministers must make a scheme (a “control scheme”) for the purpose of ensuring that any measures mentioned in subsection (1)(b) which they consider should be taken are taken.
- (3) The Scottish Ministers must notify the person who carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm to which the control scheme relates at least 14 days before the scheme comes into effect that the scheme has been made.
- (4) A control scheme must—
 - (a) specify the date on which it is to come into effect (which date must be not less than 14 days after the day on which it was made),
 - (b) identify the fish farm or shellfish farm to which it relates,
 - (c) specify the measures that are to be taken in relation to the commercially damaging species or otherwise,
 - (d) specify which of those measures are to be taken—
 - (i) by the person who for the time being carries on a business of fish farming or shellfish farming at the fish farm or shellfish farm, and
 - (ii) by the Scottish Ministers, and
 - (e) prescribe time limits within which any measures specified under paragraph (d) are to be taken.
- (5) A control scheme may—
 - (a) specify different measures to be taken—

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- (i) by different persons such as are mentioned in subsection (4)(d),
 - (ii) in respect of different fish farms or shellfish farms,
 - (b) provide for the extension of any time limit prescribed in the scheme,
 - (c) include incidental, supplemental, consequential, transitional, transitory or saving provision.
- (6) Schedule 1, which makes provision about the making, variation and revocation of control schemes, and appeals against such matters, has effect.
- (7) The person who for the time being carries on a business of fish farming or shellfish farming at a fish farm or shellfish farm to which a control scheme relates must take such measures as the scheme may require of that person in accordance with its provisions.
- (8) The Scottish Ministers must, at least once in every 12 month period, review a control scheme for the purpose of assessing compliance with its provisions.
- (9) Where the Scottish Ministers are of the opinion that a person has failed to comply with subsection (7), they may carry out the requirement if they are satisfied that it is still necessary to do so.

18 Emergency action notices

- (1) This section applies where the Scottish Ministers are satisfied—
- (a) that a commercially damaging species is present on a fish farm or shellfish farm, and
 - (b) that unless urgent action is taken, the commercially damaging species will spread quickly to other areas and have an immediate and significant adverse impact on—
 - (i) other fish or shellfish or the ability of persons to commercially exploit them, or
 - (ii) the economic or commercial interests of a person who carries on a business of fish farming or shellfish farming.
- (2) No notice under subsection (3) of section 16 need be served on a person mentioned in paragraph (a) of that subsection, and no consultation to secure an agreement with such a person need be carried out under paragraph (b) of that subsection.
- (3) But the Scottish Ministers must serve on such a person notice (an “emergency action notice”) of their intention to take urgent action in respect of the commercially damaging species.
- (4) An emergency action notice must state—
- (a) the type of commercially damaging species that is present on the fish farm or shellfish farm,
 - (b) the nature of the threat that it poses and the impact mentioned in subsection (1) (b) that it will have,
 - (c) the measures that the Scottish Ministers propose to take for the purpose of—
 - (i) removing the species from,
 - (ii) reducing the incidence of the species on,
 - (iii) preventing the spread of the species beyond, or
 - (iv) otherwise controlling the species on,

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- the fish farm or shellfish farm, and
 - (d) the places where, the times at which and the methods by which the Scottish Ministers intend to carry out such measures.
- (5) No earlier than 14 days after the day on which an emergency action notice has been served, the Scottish Ministers may take—
- (a) such measures as are specified in the notice,
 - (b) such steps towards taking such measures as the Scottish Ministers think fit.

19 Appeals in connection with emergency action notices

- (1) Any person who carries on a business of fish farming or shellfish farming at a fish farm or shellfish farm to which an emergency action notice under section 18 relates may appeal by way of summary application to a sheriff against—
- (a) the decision of the Scottish Ministers to serve the notice,
 - (b) the terms of such a notice.
- (2) An appeal under subsection (1) must be made within the period of 14 days beginning with the day on which the emergency action notice is served.
- (3) In an appeal under subsection (1)—
- (a) the sheriff may make such order as the sheriff thinks appropriate, and
 - (b) the sheriff's decision is final.

Powers

20 Power to enter fish farms, shellfish farms, etc.

- (1) A person authorised by the Scottish Ministers for a purpose mentioned in subsection (2) has the power to enter—
- (a) any land, fish farm or shellfish farm,
 - (b) any premises (other than a dwelling house) associated with the management or operation of a fish farm or shellfish farm.
- (2) The purposes for which the Scottish Ministers may authorise a person are—
- (a) the obtaining of information by them in connection with satisfying themselves as to matters mentioned in subsection (1) of section 18,
 - (b) the determination of whether any of their functions under any of sections 16 to 18 should be carried out,
 - (c) the carrying out of any of those functions,
 - (d) the determination of how far and in what manner any requirement placed on any person under or by virtue of this Chapter has been complied with.
- (3) A power of entry under this section must be exercised at a reasonable hour unless the person exercising it—
- (a) is doing so for a purpose mentioned in subsection (2)(a),
 - (b) is doing so for the purpose of determining whether the Scottish Ministers' functions under section 18 should be carried out, or
 - (c) otherwise considers the case is one of urgency.

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- (4) Any person who proposes to exercise any power of entry conferred by this section must, if so required, produce evidence of the person's identity and authorisation.

Offences

21 Offences in relation to control agreements, control schemes, etc.

- (1) A person commits an offence if the person refuses or fails to comply with any requirement imposed on the person by a control agreement under section 16 or a control scheme under section 17.
- (2) A person commits an offence if the person wilfully obstructs any person authorised under subsection (1) of section 20 carrying out any function under that section.
- (3) It is a defence for a person charged with an offence under subsection (1) of failing to comply with a requirement mentioned in that subsection to show that the person had a reasonable excuse for failing to so comply.
- (4) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) A person who commits an offence under subsection (2) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to a fine.

Interpretation of Chapter 3

22 Interpretation of Chapter 3

In this Chapter, “commercially damaging species” means a species specified in an order under section 11(1).

CHAPTER 4

PLANNING PERMISSION

23 Planning permission for marine fish farms

- (1) Section 31A of the Town and Country Planning (Scotland) Act 1997 (planning permission in respect of operation of marine fish farm) is amended in accordance with this section.
- (2) After subsection (2) insert—
- “(2A) Subject to subsection (4), any planning permission may be granted by the Scottish Ministers—
- (a) by order, or
 - (b) on application to them in accordance with regulations under subsection (8).”.

(3) After subsection (4) insert—

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“(4A) Subsection (4B) applies where—

- (a) an order granting planning permission (whether by virtue of subsection (2A)(a) or subsection (3)) is revoked, and
- (b) the date of the revocation is, in relation to any marine fish farm to which the order applied, earlier than the appropriate date (within the meaning of section 26AA(2)) in respect of that fish farm.

(4B) For the purposes of the operation of section 26AA(1)(a)(ii) in relation to any such marine fish farm after revocation of the order, the fact that planning permission had been granted by the order is to be ignored.”.

(4) In subsection (8)—

- (a) paragraph (a) is repealed, and
- (b) in paragraph (b), for the words “such an application” substitute “an application for planning permission”.

PART 2

SALMON FISHERIES, ETC.

Governance

24 District salmon fishery boards: openness and accountability

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) In section 44 (financial powers and duties of district salmon fishery boards), after subsection (1) insert—

“(1A) As soon as practicable after the annual meeting held under subsection (1) above, the clerk of the board must—

- (a) arrange for the final report and audited accounts to be published; and
- (b) send a copy of the final report and audited accounts to the Scottish Ministers.

(1B) In subsection (1A) above, the references to the final report and audited accounts are references to—

- (a) the report and audited accounts as submitted for consideration at the annual meeting held under subsection (1) above; or
- (b) if they are revised following consideration at the meeting, the revised versions of them.”.

(3) After section 46 insert—

“46A Annual report

(1) This section applies in relation to the report to be prepared under section 44(1) (a) of this Act by a district salmon fishery board.

(2) The board must ensure that the report contains, in particular—

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- (a) a summary of what the board have done in carrying out their functions under this Act, or any other enactment, during the year to which the report relates,
 - (b) a summary of what the board propose to do in carrying out those functions in the following year,
 - (c) information about complaints made to the board during the year, including—
 - (i) the number of complaints, and
 - (ii) a statement of the nature of each complaint and how it was disposed of, and
 - (d) a statement as to how the board—
 - (i) have complied during the year with the good governance requirements, and
 - (ii) propose to comply with those requirements in the following year.
- (3) For the purposes of subsection (2)(d) above, the “good governance requirements” are the requirements under—
- (a) this section,
 - (b) section 44(1) and (1A) of this Act, and
 - (c) sections 46B to 46E of this Act.

46B Annual public meeting

- (1) A district salmon fishery board—
 - (a) must hold one public meeting in each year, to be known as the “annual public meeting” of the board, and
 - (b) may hold other public meetings in the course of the year.
- (2) Subject to subsection (4) below, the matters to be considered at the annual public meeting are for the board to determine, but must include the final report and statement of accounts required to be prepared under section 44(1).
- (3) The reference in subsection (2) above to the final report and audited accounts is to be construed in accordance with section 44(1B) of this Act.
- (4) The board must ensure that members of the public, and others who attend or propose to attend the meeting, are given an opportunity—
 - (a) to propose matters for consideration at the meeting, and
 - (b) to speak at the meeting.

46C Further provision about meetings

- (1) Subsection (2) below applies in relation to—
 - (a) the annual meeting of qualified proprietors required to be called by the clerk of a district salmon fishery board under section 44(1) of this Act, and
 - (b) the annual public meeting of a district salmon fishery board.
- (2) The clerk of the board must, no later than 21 days before the day on which the meeting is to be held—

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- (a) prepare a notice—
 - (i) specifying the date and time of the meeting and the place where it is to be held,
 - (ii) containing a list of the matters to be considered at the meeting,
 - (iii) stating that the meeting is open to the public, and
 - (iv) in the case of the annual public meeting, providing information as to how salmon anglers, tenant netsmen and other members of the public can submit proposals for matters to be considered at the meeting,
 - (b) arrange for the notice to be published in such manner as the clerk considers appropriate, and
 - (c) send a copy of the notice to the Scottish Ministers.
- (3) In relation to any other meeting of a district salmon fishery board, the clerk of the board must—
- (a) take such steps as the clerk considers appropriate to publicise the meeting, and
 - (b) subject to subsection (6) below, ensure that the public are given an opportunity to attend the meeting.
- (4) Subsections (5) to (9) below apply in relation to—
- (a) the meetings referred to in subsection (1) above, and
 - (b) any other meeting of a district salmon fishery board.
- (5) Subject to subsection (6) below, the board must ensure that the business at the meeting is conducted in public.
- (6) In the case of a meeting other than the annual public meeting, the board may, if there is a good reason for doing so, decide to conduct the meeting, or to consider any particular item of business, in private.
- (7) As soon as practicable after the meeting, the clerk of the board must—
- (a) prepare a minute of the meeting,
 - (b) arrange for the minute to be published in such manner as the clerk considers appropriate, and
 - (c) in the case of the minutes of the meetings referred to in subsection (1) above, send a copy of the minutes to the Scottish Ministers.
- (8) Subsection (9) below applies where the board decide—
- (a) to conduct the meeting in private, or
 - (b) to consider any item of business at the meeting in private.
- (9) The board must state reasons for the decision and ensure that the statement of reasons is included in the minute of the meeting.

46D Complaints procedure

- (1) A district salmon fishery board must maintain, and keep under review, proper arrangements for dealing with complaints made to the board about the way in which the board have carried out, or propose to carry out, their functions under this Act or any other enactment.

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- (2) A board's arrangements under subsection (1) above must, in particular, include provision for dealing with complaints made by—
 - (a) members of the public,
 - (b) proprietors of salmon fisheries in the board's district,
 - (c) salmon anglers in the board's district,
 - (d) tenant netsmen in the board's district,
 - (e) members of the board,
 - (f) other district salmon fishery boards.
- (3) The arrangements may make different provision in relation to different categories of complaint or complainant.
- (4) As soon as practicable after making or reviewing arrangements under subsection (1) above, a district salmon fishery board must—
 - (a) take such steps to publicise the arrangements as the board consider appropriate in order to bring them to the attention of persons who may wish to make complaints, and
 - (b) send to the Scottish Ministers a note of the arrangements.
- (5) A district salmon fishery board must keep records of complaints made to the board about the way in which they have carried out, or propose to carry out, their functions, including information about how each complaint was disposed of.

46E Members' interests

- (1) A district salmon fishery board must maintain, and keep under review, proper arrangements for the registration and declaration of relevant financial interests of members of the board.
- (2) A board's arrangements under subsection (1) above must, in particular, include provision for—
 - (a) further defining what are relevant financial interests,
 - (b) the clerk to keep a register of members' relevant financial interests,
 - (c) members to register their relevant financial interests in the register,
 - (d) members to declare any relevant financial interests before taking part in the board's consideration of any business,
 - (e) members to be excluded from taking part in the board's consideration of any business in which the member has a relevant financial interest.
- (3) A district salmon fishery board must ensure that the register of members' relevant financial interests is made available for public inspection.
- (4) In this section, "relevant financial interests"—
 - (a) means interests of a pecuniary nature that could be affected by a decision of the board, or the holding of which could otherwise have a bearing on or otherwise influence a member's view on any matter being considered by the board, and
 - (b) includes such interests held by a member or by another person with whom the member has a personal or business relationship.

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46F Ministerial power to modify the good governance requirements

- (1) The Scottish Ministers may by order—
 - (a) modify any of the good governance requirements,
 - (b) modify this Act so as to impose further requirements on district salmon fishery boards.
- (2) An order under subsection (1) above may make only such provision as the Scottish Ministers consider necessary for a purpose specified in subsection (3) below.
- (3) The purposes are—
 - (a) ensuring that the boards' affairs are conducted in an open and accountable manner,
 - (b) ensuring that the boards' affairs are conducted to appropriate standards of propriety and good governance.
- (4) An order under subsection (1) above may include incidental, supplemental, consequential, transitional, transitory or saving provision.
- (5) In this section, the “good governance requirements” has the same meaning as in section 46A(3) of this Act.

46G Ministerial power to dissolve the committee constituting a board

- (1) This section applies where the Scottish Ministers consider that a district salmon fishery board have persistently—
 - (a) failed to comply with the good governance requirements, or
 - (b) otherwise contravened the requirements of this Act.
 - (2) The Scottish Ministers may by order dissolve the committee constituting the board on a date specified in the order.
 - (3) The dissolution of the committee by an order under subsection (2) above has the same effect in relation to the committee (and the board) as the expiry of the period of three years mentioned in sections 43(3) and 47(1) of this Act.
 - (4) Accordingly, the references in section 43(3) and 47(1) of this Act to the expiry of the period of three years are to be read, in relation to a committee dissolved by an order under subsection (2) above, as including a reference to the date of dissolution specified in the order.
 - (5) In this section, the “good governance requirements” has the same meaning as in section 46A(3) of this Act.”.
- (4) In section 68 (orders and regulations), in subsection (4), after “Act” insert “, and no order is to be made under section 46F(1) of this Act,”.

25 Duty to consult and report before making certain applications

- (1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.
- (2) In each of the following provisions, for “10” substitute “9B”—

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- (a) subsection (7) of section 33 (salmon fishing: regulations as to baits and lures),
 - (b) subsection (3) of section 35 (designation orders),
 - (c) subsection (4) of section 36 (estuary limits),
 - (d) subsection (4) of section 37 (annual close times for salmon).
- (3) In schedule 1 (procedure for making certain orders and regulations under the Act), before paragraph 10 insert—
- “9B (1) This paragraph applies where a person (the “applicant”) proposes to make an application to the Scottish Ministers under paragraph 1, 3, 5 or 7 above.
- (2) The applicant must—
- (a) give notice in accordance with sub-paragraph (3) below that an application is proposed,
 - (b) specify in the notice the period within which, and the manner in which, representations or objections with respect to the proposed application may be made,
 - (c) specify in the notice details of—
 - (i) where and how such representations or objections (if any are made) may be viewed, and
 - (ii) how copies of any such representations or objections that are made may be obtained,
 - (d) consult persons who, so far as the applicant can reasonably ascertain, have an interest in, or may be affected by, the proposed application, and
 - (e) specify the period (being not less than 28 days beginning with the date of consultation) within which, and the manner in which, representations or objections with respect to the proposed application may be made by such persons.
- (3) A notice of the proposed application must be published at least once in each of two successive weeks in a newspaper (which may be a local newspaper) circulating in the district or districts affected by the proposed application.
- (4) The period mentioned in sub-paragraph (2)(b) above is a period of not less than 28 days beginning with—
- (a) if notice of the proposed application is published only once in the first of the two successive weeks as mentioned in sub-paragraph (3) above, the date on which it is published in that week,
 - (b) if such notice is published more than once in the first of those two successive weeks, the date on which it is first published in that week.
- (5) In deciding whether or not to make the proposed application, the applicant must take into account any representations and objections made in respect of it.
- (6) Having decided whether or not to make the proposed application, the applicant must—

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- (a) publish in a newspaper (which may be a local newspaper) circulating in the district or districts affected by the proposed application a notice containing—
 - (i) a summary of the reasons for the decision,
 - (ii) details of where and how a written statement of such reasons may be viewed, and
 - (iii) details of how copies of such a written statement may be obtained, and
 - (b) send a copy of such a written statement to any person who made representations or objections to the proposed application under this paragraph.
- (7) The costs of complying with sub-paragraphs (2) and (6) above are to be met by the applicant.
- 9C (1) This paragraph applies where an applicant, having complied with the requirements of paragraph 9B above, decides to make an application mentioned in sub-paragraph (1) of that paragraph.
- (2) When making the application, the applicant must include a report—
- (a) stating that the requirements of paragraph 9B above have been complied with,
 - (b) explaining how those requirements were complied with,
 - (c) providing details of the persons consulted,
 - (d) explaining the substance of any representations and objections made in relation to the application, and the extent to which they were taken into account in deciding to proceed with the application, and
 - (e) giving the reasons for proceeding with the application.”.

Management

26 Carcass tagging

- (1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.
- (2) After section 21 insert—

“21A Salmon carcass tagging

- (1) The Scottish Ministers may by regulations make provision for or in connection with tagging the carcasses of salmon.
- (2) Regulations under subsection (1) above may, in particular, make provision—
 - (a) about—
 - (i) the nature and form of tags,
 - (ii) the information which tags are to contain and the nature and form of that information,
 - (iii) applications for, and the supply, issue and storage of, tags,

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- (iv) the persons or descriptions of persons who may supply and issue tags, including provision about registration of such persons,
 - (v) the method of affixing tags to carcasses and the circumstances in which, and the time at or by which, they are to be affixed,
 - (vi) the circumstances in which, and the time at or by which, tags may be removed,
 - (vii) the steps to be taken in the event of loss of, or damage to, tags,
 - (b) for or about the keeping of records in connection with fishing for, taking, and tagging of salmon to which the regulations apply (including the form and content of such records),
 - (c) for or about the inspection or examination of those records, or the information contained in them, by persons or descriptions of persons mentioned in paragraph (e) below, by such methods as the regulations may specify, and the steps to be taken in the event of loss of, or damage to, the records,
 - (d) for or about the inspection or examination of tags by persons or descriptions of persons mentioned in paragraph (e) below, including provision about the retention of tags after their removal,
 - (e) for or about persons, or descriptions of persons, responsible for enforcing and ensuring compliance with the regulations (including the appointment and functions of such persons),
 - (f) for or about the seizure, detention and destruction by persons, or descriptions of persons, mentioned in paragraph (e) above of salmon—
 - (i) that have not been tagged, or
 - (ii) from which a tag has been removed otherwise than, in accordance with the provisions of the regulations,
 - (g) for or about the imposition by the Scottish Ministers of charges for the recovery of any reasonable costs they incur in connection with the supply or issue of tags (including charges in relation to the administration costs associated with the imposition of such charges),
 - (h) for exemptions and exceptions to the regulations and for matters in respect of which the regulations do not apply.
- (3) Regulations under subsection (1) above may make—
- (a) different provision for different purposes and areas,
 - (b) incidental, supplemental, consequential, transitional, transitory or saving provision,
 - (c) such modifications of Part 5 of this Act as the Scottish Ministers think fit.
- (4) A person commits an offence if the person—
- (a) sells, offers or exposes for sale, or has in the person's possession, any salmon—
 - (i) that has not been tagged in accordance with regulations under subsection (1) above, or
 - (ii) from which a tag has been removed otherwise than in accordance with such regulations,

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- (b) acts in contravention of such regulations, or
 - (c) fails to take any action required of that person or (as the case may be) fails to comply with any requirement imposed on that person by such regulations.
- (5) It is a defence for a person charged with an offence under subsection (4)(c) above to show that the person had a reasonable excuse for failing to take any action or comply with any requirement as mentioned in that subsection.
- (6) A person who commits an offence under subsection (4) above—
- (a) is liable on summary conviction to a fine not exceeding level 4 on the standard scale,
 - (b) may be convicted on the evidence of one person.”.
- (3) In section 30 (exemptions in relation to fish farming)—
- (a) in subsection (1), after “under” insert “section 21A or”,
 - (b) in subsection (5), after “18(1)(b)” insert “, 21A(4)(a) or (b)”.
- (4) In section 68 (orders and regulations), in subsection (4), after “under” insert “subsection (1) of section 21A of this Act that make modifications such as are mentioned in subsection (3)(c) of that section, or under”.

27 Powers to take fish or samples for analysis, etc.

- (1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.
- (2) After section 64 insert—

“64A Powers in relation to salmon and freshwater fisheries: sampling, etc.

- (1) A person authorised by the Scottish Ministers (an “authorised person”) may—
 - (a) for a purpose mentioned in subsection (2)(a) or (b) below, require a person having rights in a salmon fishery or freshwater fishery—
 - (i) to permit the authorised person to take and retain fish from the fishery,
 - (ii) to permit the authorised person to take samples of material from fish in the fishery,
 - (iii) to provide the authorised person with fish, or samples of material from fish, in the fishery,
 - (b) for a purpose mentioned in subsection (2)(c) below, affix a tag of such type and in such a way as the Scottish Ministers consider appropriate to any fish taken from a salmon fishery or freshwater fishery,
 - (c) for a purpose mentioned in subsection (2)(d) below, enter on a salmon fishery or freshwater fishery.
- (2) The purposes referred to in subsection (1) above are—
 - (a) carrying out analysis of the fish or samples by any method that the Scottish Ministers consider appropriate,
 - (b) ascertaining whether an offence has been committed under section 33A of this Act,
 - (c) tracking or monitoring the fish,

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- (d) exercising the powers mentioned in paragraphs (a) and (b) of subsection (1) above, or tracking or monitoring fish tagged under paragraph (b) of that subsection.
- (3) An authorised person seeking to exercise a power mentioned in subsection (1) above must, if requested, produce evidence of identity and authorisation.
- (4) A person having rights in a salmon fishery or freshwater fishery commits an offence if the person—
 - (a) fails or wilfully refuses to comply with a requirement under paragraph (a) of subsection (1) above, or
 - (b) obstructs an authorised person in the exercise of any of the powers under paragraph (b) or (c) of that subsection.
- (5) It is a defence for a person charged with an offence under subsection (4)(a) above to show that the person had a reasonable excuse for failing or refusing to comply with a requirement as mentioned in that subsection.
- (6) A person who commits an offence—
 - (a) under subsection (4)(a) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale,
 - (b) under subsection (4)(b) above is liable on summary conviction—
 - (i) to a fine not exceeding level 3 on the standard scale,
 - (ii) to imprisonment for a term not exceeding 3 months, or
 - (iii) to both such fine and such imprisonment.
- (7) In this section, references to a person having rights in a salmon fishery or freshwater fishery are to be construed in accordance with section 64(3) of this Act.”.

28 Power of Scottish Ministers to conduct inquiries and obtain information

- (1) Section 64 of the Salmon and Freshwater (Consolidation) (Scotland) Act 2003 (power of the Scottish Ministers to conduct inquiries and to obtain information) is amended in accordance with this section.
- (2) In subsection (1)—
 - (a) before paragraph (a) insert—
 - “(za) require a person having rights in a salmon fishery or freshwater fishery to provide the Scottish Ministers with such information relating to the fishery as they may reasonably request;”,
 - (b) in paragraph (a), the words from “, provided” to the end of the paragraph are repealed.
- (3) In subsection (2), for the words “Any proprietor or occupier of a fishery” substitute “Any person having rights in a salmon fishery or freshwater fishery”.
- (4) After subsection (2) insert—
 - “(3) In this section, a “person having rights in a salmon fishery or freshwater fishery” means—
 - (a) a proprietor of a salmon fishery;

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- (b) an occupier of such a fishery;
- (c) an owner of land to which a right of fishing for freshwater fish pertains; or
- (d) an occupier of such a right.”.

29 Monitoring and evaluation of the effects of orders, etc.

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) In section 33 (salmon fishing: regulations as to baits and lures), after subsection (6) insert—

“(6A) Regulations under subsection (1) above may impose requirements on district salmon fishery boards in relation to monitoring and evaluation of the effect of the regulations on salmon stocks.

(6B) A district salmon fishery board commits an offence if the board—

- (a) acts in contravention of any such requirements; or
- (b) fails to take any action required of the board by any such requirements.

(6C) A board which commits an offence under subsection (6B) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

(3) In section 37 (annual close times for salmon)—

- (a) in subsection (2), after “below” insert “and to section 38(5)(c) of this Act”,
- (b) in subsection (3), at the beginning insert “Without prejudice to section 38(5)(c) of this Act,”,
- (c) after subsection (3) insert—

“(3A) An annual close time order may impose requirements on district salmon fishery boards or proprietors of salmon fisheries in relation to monitoring and evaluation of the effect of the order on salmon stocks.

(3B) A district salmon fishery board or proprietor commits an offence if the board or proprietor—

- (a) acts in contravention of any such requirements; or
- (b) fails to take any action required of the board or proprietor by any such requirements.

(3C) A board which or proprietor who commits an offence under subsection (3B) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

(4) In section 38 (salmon conservation regulations)—

- (a) in subsection (4), after “subsection (5)(b)” insert “and (c)”,
- (b) in subsection (5), after paragraph (b) insert—
 - “(c) subject to section 37(1) of this Act, prescribe for any salmon fishery district the dates of the annual close time for salmon and the periods within that time when it is permitted to fish for and take salmon by rod and line.”,
- (c) in subsection (6), after paragraph (b) insert—

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- “(ba) impose on district salmon fishery boards or proprietors of salmon fisheries such requirements as the Scottish Ministers consider necessary or expedient in relation to monitoring and evaluation of the effect of the regulations on salmon stocks;”.

30 Power to vary procedures for orders, etc. relating to certain fisheries

- (1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.
- (2) In section 33 (salmon fishing: regulations as to baits and lures), after subsection (7) insert—
- “(8) The Scottish Ministers may by order vary the provisions of—
- (a) subsections (2) to (5) above;
 - (b) paragraphs 9B to 15 of schedule 1 to this Act as they apply to the making of regulations under subsection (1) above.”.

(3) In section 35 (designation orders), subsection (4) is repealed.

(4) In section 39 (procedure for making orders and regulations under section 33 and Part 2)—

 - (a) the existing text becomes subsection (1) of section 39,
 - (b) after that subsection insert—

“(2) The Scottish Ministers may by order vary the provisions of schedule 1 to this Act.

(3) An order under subsection (2) above may make different provision for different purposes.

(4) Subsection (2) above is without prejudice to section 33(8)(b) of this Act.”.

31 Offence of fishing for salmon during annual close time

In section 14 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (fishing for salmon during annual close time), in subsection (2), for the words from “by”, where it second occurs, to the end of the subsection substitute “in the district in which the fishing occurs—

- (a) by the regulations or byelaws in force in that district;
- (b) by a designation order made in respect of that district;
- (c) in accordance with the provisions mentioned in section 37(2)(b) of this Act as they apply in respect of that district;
- (d) by an annual close time order made in respect of that district; or
- (e) by regulations under section 38 of this Act that make provision as mentioned in subsection (5)(c) of that section in respect of that district.”.

32 Consents for introduction of fish into inland waters

- (1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

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- (2) In section 33A (unauthorised introduction of fish into inland waters)—
- (a) in subsection (3), for “this section” substitute “subsection (1) or (2) above”,
 - (b) after subsection (3) insert—
 - “(3A) The appropriate authority may, in granting consent for the purposes of subsection (3)(b) above, impose conditions or requirements.
 - (3B) A person shall be guilty of an offence if the person—
 - (a) acts in contravention of any such condition or requirement; or
 - (b) fails to take any action required of the person by any such condition or requirement.
 - (3C) It is a defence for a person charged with an offence under subsection (3B)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.”
 - (c) after subsection (4) insert—
 - “(4A) Subsection (4) is subject to provision made in regulations under section 33B of this Act.”
- (3) After section 33A insert—

“33B Power to modify district salmon fishery boards’ functions under section 33A

- (1) This section applies to the functions of the appropriate authority under section 33A(3)(b) and (3A) of this Act (the “consenting functions”) so far as the functions may be carried out by district salmon fishery boards.
- (2) The Scottish Ministers may by regulations—
 - (a) provide for the consenting functions to be carried out by the Scottish Ministers instead of district salmon fishery boards in specified cases or circumstances,
 - (b) provide for applications made to district salmon fishery boards for consent under section 33A of this Act to be referred to the Scottish Ministers in specified cases or circumstances,
 - (c) in relation to an application referred to the Scottish Ministers by virtue of provision made under paragraph (b) above, provide for the Scottish Ministers—
 - (i) to determine the application and to carry out the consenting functions in relation to the application, or
 - (ii) to issue directions to the district salmon fishery board to which the application was made about the determination of the application and the carrying out of the consenting functions in relation to the application.
- (3) Regulations under subsection (2) above may—
 - (a) make different provision for different purposes, including different provision for—
 - (i) different district salmon fishery districts, or
 - (ii) different inland waters or parts of such waters,

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(b) include incidental, supplemental, consequential, transitional, transitory or saving provision.

(4) In subsection (2) above, “specified” means specified in regulations under that subsection.”.

33 Offences exempted by permission or consent: power to attach conditions, etc.

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) In section 27 (exemption from certain offences: salmon)—

(a) after subsection (1) insert—

“(1A) In granting permission under subsection (1) above, a district salmon fishery board or (as the case may be) the Scottish Ministers may impose conditions or requirements.

(1B) A person commits an offence if the person—

- (a) acts in contravention of any such condition or requirement; or
- (b) fails to take any action required of the person by any such condition or requirement.

(1C) It is a defence for a person charged with an offence under subsection (1B)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.

(1D) A person who commits an offence under subsection (1B) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

(b) in subsection (3), after “permitted” insert “, any conditions or requirements imposed under subsection (1A) above”.

(3) In section 28 (exemptions: fish other than salmon), after subsection (2) insert—

“(3) In granting permission under subsection (1) above, the Scottish Ministers may impose conditions or requirements.

(4) A person commits an offence if the person—

- (a) acts in contravention of any such condition or requirement; or
- (b) fails to take any action required of the person by any such condition or requirement.

(5) It is a defence for a person charged with an offence under subsection (4)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.

(6) A person who commits an offence under subsection (4) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

(4) In section 30 (exemptions in relation to fish farming), after subsection (2) insert—

“(2A) In granting consent under subsection (2) above, the Scottish Ministers may impose conditions or requirements.

(2B) A person commits an offence if the person—

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- (a) acts in contravention of any such condition or requirement; or
- (b) fails to take any action required of the person by any such condition or requirement.

(2C) It is a defence for a person charged with an offence under subsection (2B)(b) above to show that the person had a reasonable excuse for failing to take the action mentioned in that subsection.

(2D) A person who commits an offence under subsection (2B) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003: Crown application

34 Application of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 to the Crown

For section 67 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (Crown application) substitute—

“67 Application of this Act to the Crown

- (1) This Act binds the Crown and applies in relation to Crown land as it applies in relation to any other land.
- (2) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.
- (3) 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.
- (4) Despite subsection (2), any provision made by or under the provisions of this Act applies to persons in the public service of the Crown as it applies to other persons.
- (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 or in right of Her private estates,
 - (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) The powers conferred by sections 54(1), 64(1)(a) and 64A(1)(c) are exercisable in relation to land an interest in which belongs to Her Majesty in right of Her private estates only with the consent of a person appointed by Her Majesty under the Royal Sign Manual or, if no such appointment is made, by the Scottish Ministers.
- (7) In this section—
 - (a) references to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862,
 - (b) “Government department” means a department of the United Kingdom government.

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(8) For the purposes of this section, “land” includes salmon fisheries.”.

PART 3

SEA FISHERIES

Enforcement of sea fisheries legislation

35 Powers of British sea-fishery officers to enforce sea fisheries legislation

- (1) For the purposes of enforcing the sea fisheries legislation, a British sea-fishery officer has—
 - (a) the common enforcement powers conferred by Part 7 of the Marine (Scotland) Act 2010, and
 - (b) the powers conferred by sections 36 and 39.
- (2) Subject to subsection (3), the powers which a British sea-fishery officer has by virtue of subsection (1) for the purposes of enforcing the sea fisheries legislation may be exercised—
 - (a) in the Scottish enforcement area, and
 - (b) in relation to any Scottish fishing boat wherever it may be.
- (3) Those powers may not be exercised in relation to any British warship (that is, any ship belonging to Her Majesty and forming part of Her Majesty’s armed forces).
- (4) The powers which a British sea-fishery officer has by virtue of subsection (1) are without prejudice to any other powers exercisable by the officer for the purposes of enforcing the sea fisheries legislation.
- (5) However, the officer may exercise any such other power only in a case where the officer is unable to exercise a power which the officer has by virtue of subsection (1).
- (6) So far as necessary for the purposes, or in consequence, of the exercise of the powers referred to in subsection (1)(a), references in Part 7 of the Marine (Scotland) Act 2010 to a marine enforcement officer are to be read as including references to a British sea-fishery officer.
- (7) Sections 151 to 155 of the Marine (Scotland) Act 2010 (duties and liabilities of, and offences in relation to, marine enforcement officers) have effect as if—
 - (a) any reference to a power conferred by Part 7 of that Act included a reference to—
 - (i) such a power as applied by subsection (1)(a), and
 - (ii) the powers conferred by sections 36 and 39, and
 - (b) any reference to a marine enforcement officer’s functions under that Act included a reference to the functions of a British sea-fishery officer under—
 - (i) Part 7 of that Act as applied by subsection (1)(a), and
 - (ii) sections 36 and 39.

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Detention of vessels in connection with court proceedings

36 Power to detain vessels in connection with court proceedings

- (1) This section applies where—
 - (a) a British sea-fishery officer has reasonable grounds for suspecting that an offence under the sea fisheries legislation has been committed by the master, an owner or a charterer of a vessel (referred to as “A”), and
 - (b) the officer reasonably believes that—
 - (i) if proceedings are taken against A for the offence, there is a real risk that A will not attend court unless the vessel is detained under this section, or
 - (ii) if A is convicted of the offence and the court by or before which A is convicted imposes a fine on A, it is likely that the court will order the vessel to be detained.
- (2) Where this section applies, a British sea-fishery officer may—
 - (a) take, or arrange for another person to take, the vessel and its crew to the port that appears to the officer to be the nearest convenient port, or
 - (b) require any person who is for the time being in charge of the vessel to take it and its crew to that port.
- (3) When the vessel has been taken to a port, the officer may—
 - (a) detain it there, or
 - (b) require the person for the time being in charge of it to do so.
- (4) A British sea-fishery officer who detains a vessel under this section must, if it is reasonably practicable to do so, serve a notice on the person who is for the time being in charge of the vessel.
- (5) The notice must state—
 - (a) the reasons for detaining the vessel, and
 - (b) the circumstances in which the vessel may be released.

37 Release of vessel detained under section 36

- (1) This section applies where a vessel is being detained under section 36.
- (2) The vessel ceases to be detained under that section if one of the following things occurs—
 - (a) the notice of detention is withdrawn,
 - (b) a sheriff orders the release of the vessel under section 38,
 - (c) any proceedings taken against the master, owner or charterer of the vessel have concluded,
 - (d) the court referred to in section 36(1)(b)(ii) exercises any power it has to order the vessel to be detained.
- (3) A notice of detention is withdrawn by the service by a British sea-fishery officer of a further notice on the person who is for the time being in charge of the vessel, stating that the vessel is released.

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- (4) If any of the grounds of release mentioned in subsection (5) applies, then any notice of detention must be withdrawn as soon as possible.
- (5) The grounds of release are—
- (a) that a procurator fiscal has decided not to take any proceedings against the master, owner or charterer of the vessel in respect of any offence in relation to which the vessel was detained,
 - (b) where a fixed penalty notice has been issued in respect of such an offence, that the appropriate fixed penalty has been paid,
 - (c) that there are no grounds for believing that any person referred to in paragraph (a) against whom proceedings have been, or may be, taken will fail to attend court,
 - (d) that there are no grounds for believing that the court referred to in section 36(1)(b)(ii) will order the vessel to be detained.
- (6) In this section, “notice of detention” means a notice served under section 36(4).

38 Power of sheriff to order release of vessels

- (1) This section applies where a vessel is being detained under section 36.
- (2) If, on an application to a sheriff by the master, an owner or a charterer of the vessel, the sheriff is satisfied as to either of the matters mentioned in subsection (4), the sheriff may order that the vessel be released.
- (3) An application under subsection (2) is to be made by way of summary application.
- (4) Those matters are that—
- (a) the continued detention of the vessel under section 36 is not necessary to secure that the master, an owner or a charterer of the vessel will attend court, or
 - (b) there are no grounds for believing that the court referred to in subsection (1)(b)(ii) of that section will order the vessel to be detained.

Inspection and seizure of objects used in commercial sea fishing

39 Power to inspect and seize objects

- (1) A British sea-fishery officer may inspect any object which the officer reasonably believes has been, or is being, used for or in connection with commercial sea fishing.
- (2) The officer may lift an object out of the sea for the purpose of inspecting it under this section.
- (3) A British sea-fishery officer who has inspected an object under this section may seize the object.
- (4) The power conferred by subsection (3) may be exercised only—
- (a) for the purpose of determining whether an offence under the sea fisheries legislation has been, or is being, committed, or
 - (b) in relation to an object that the officer reasonably believes to be evidence of the commission of such an offence.

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- (5) If, having inspected an object under this section, the officer decides not to seize it under subsection (3), the officer must, if it is reasonably practicable to do so, replace the object in the location where it was found.
- (6) If it is not reasonably practicable to replace the object in accordance with subsection (5), the officer may seize the object until such time as it may be collected by its owner.
- (7) A power conferred by this section to seize an object includes power to seize—
 - (a) anything that is attached to the object,
 - (b) anything that is contained in the object.
- (8) A reference in this section to replacing an object includes, in the case of fishing gear, a reference to re-setting the gear in the same way in which it was placed in the sea.
- (9) Anything seized under this section is to be delivered to the Scottish Ministers as soon as reasonably practicable.
- (10) In this section, “commercial sea fishing” means—
 - (a) any activity for which a licence is required by virtue of an order under section 4 (licensing of fishing boats) of the Sea Fish (Conservation) Act 1967,
 - (b) any activity regulated by an order—
 - (i) under section 1 (power to make orders as to fisheries for shellfish) of the Sea Fisheries (Shellfish) Act 1967, and
 - (ii) to which section 2 (right of several fishery) or 3 (right of regulating a fishery) of that Act applies, and
 - (c) any activity regulated by an order under section 1 (general power to prohibit sea fishing in specified areas) of the Inshore Fishing (Scotland) Act 1984.
- (11) The Scottish Ministers may by order modify the definition of “commercial sea fishing” in subsection (10).

40 Reports of inspections under section 39

- (1) This section applies where a British sea-fishery officer inspects an object under section 39.
- (2) The officer must prepare a report in relation to the inspection.
- (3) The report must state—
 - (a) the date and time of the inspection,
 - (b) the identity of the officer who carried out the inspection, and
 - (c) how the officer may be contacted.
- (4) In the case of an object seized under section 39(3) or (6), the report must also state—
 - (a) what has been seized,
 - (b) the reasons for its seizure, and
 - (c) any further action that it is proposed will be taken in relation to the object.
- (5) Where the object has not been seized under section 39(3) or (6), the officer must, if it is reasonably practicable to do so, attach a copy of the report to the object.

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- (6) If it is not reasonably practicable to do so, the officer must serve a copy of the report on every person who appears to the officer to be an owner of the object.
- (7) In a case where the officer, after taking reasonable steps to do so, is unable to identify any person as an owner of the object, the officer must take such steps as the officer thinks fit to bring the contents of the report to the attention of persons likely to be interested in it.
- (8) Where—
- (a) the object has been seized under section 39(3), and
 - (b) one of the conditions in subsection (9) is satisfied,
- the Scottish Ministers must serve a copy of the report on every person who appears to them to be an owner of the object.
- (9) The conditions are—
- (a) that a procurator fiscal has decided not to take any proceedings in respect of any offence in relation to which the object was seized,
 - (b) where a fixed penalty notice has been issued in respect of such an offence, that the appropriate fixed penalty has been paid,
 - (c) that any proceedings taken in respect of such an offence have concluded.
- (10) Where the object has been seized under section 39(6), the Scottish Ministers must serve a copy of the report on every person who appears to the Ministers to be an owner of the object at the same time as they serve a notice of collection on that person under section 42.
- (11) In a case where the Scottish Ministers, after taking reasonable steps to do so, are unable to identify any person as an owner of the object—
- (a) the reference in this section to a requirement for the Scottish Ministers to serve a copy of the report on such a person is to be read as a reference to a requirement to take such steps as the Ministers think fit to bring the contents of the report to the attention of persons likely to be interested in it, and
 - (b) the reference in subsection (10) to serving a notice of collection under section 42 is to be read as a reference to taking the steps referred to in subsection (5) of that section.

41 Retention of objects seized under section 39(3)

- (1) An object seized by a British sea-fishery officer under section 39(3) may be retained by the Scottish Ministers.
- (2) If any of the grounds of release in subsection (3) applies, the Scottish Ministers must, as soon as is reasonably practicable, make the object available for collection.
- (3) The grounds of release are—
 - (a) that a procurator fiscal has decided not to take proceedings in respect of any offence in relation to which the object was seized,
 - (b) where a fixed penalty notice has been issued in respect of such an offence, that the appropriate fixed penalty has been paid,
 - (c) that any proceedings taken in respect of such an offence have concluded without an order for forfeiture having been made in respect of the object.
- (4) Subsection (2) does not apply if the object is liable to forfeiture under section 46.

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- (5) Any reference in this section to an object seized under subsection (3) of section 39 includes a reference to anything seized by virtue of subsection (7) of that section.

42 Disposal of objects seized under section 39

- (1) This section applies to—
- (a) an object seized under section 39(3) which the Scottish Ministers—
 - (i) no longer wish to retain for any purpose, or
 - (ii) are required to make available for collection by virtue of section 41,
 - (b) an object seized under section 39(6).
- (2) In this section, “notice of collection” means a notice stating that—
- (a) the object specified in the notice is available to be collected from the location specified in the notice, and
 - (b) if the object is not collected before the end of the period of 3 months beginning with the date specified in the notice, the Scottish Ministers will dispose of the object.
- (3) The Scottish Ministers must serve a notice of collection on every person who appears to them to be an owner of the object.
- (4) The Scottish Ministers may take any other steps they think fit to notify every such person that the object is available to be collected.
- (5) If the Scottish Ministers, after taking reasonable steps to do so, are unable to identify any person as an owner of the object in order to serve a notice of collection, the Scottish Ministers must take such steps as they think fit to bring the information contained in the notice to the attention of persons likely to be interested in it.
- (6) If the Scottish Ministers comply with subsection (3) or (as the case may be) (5), they may, at the end of the period mentioned in subsection (2)(b), dispose of the object in whatever way they think fit.
- (7) Any reference in this section to an object seized under subsection (3) or (6) of section 39 includes a reference to anything seized by virtue of subsection (7) of that section.

Retention and disposal of property seized by BSFOs

43 Retention of property seized by British sea-fishery officers

- (1) This section applies to property—
- (a) seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation, other than an object seized under section 39, and
 - (b) which was seized—
 - (i) in the Scottish enforcement area, or
 - (ii) on board a Scottish fishing boat.
- (2) The officer must deliver the property to the Scottish Ministers as soon as reasonably practicable.

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- (3) Subsection (2) is subject to paragraph 13 of schedule 2.
- (4) The Scottish Ministers may retain the property.
- (5) If any of the grounds of release in subsection (6) applies, the Scottish Ministers must, as soon as is reasonably practicable, make the property available for collection.
- (6) The grounds of release are—
 - (a) that a procurator fiscal has decided not to take proceedings in respect of any offence in relation to which the property was seized,
 - (b) where a fixed penalty notice has been issued in respect of such an offence, that the appropriate fixed penalty has been paid,
 - (c) that any proceedings taken in respect of such an offence have concluded without an order for forfeiture having been made in respect of the property.
- (7) Subsection (5) does not apply if the property is liable to forfeiture under section 46 or 47.

44 Power of Scottish Ministers to sell seized fish in their possession

- (1) The Scottish Ministers may sell any fish that are being retained by them under section 43.
- (2) Any power which a court has to order the forfeiture of any such fish may instead be exercised in relation to the proceeds of any sale of the fish under this section.
- (3) Subject to subsection (6), the proceeds of any sale under this section may be retained by the Scottish Ministers until such time as—
 - (a) a court exercises any power it has to order the forfeiture of the proceeds, or
 - (b) any of the grounds of release mentioned in subsection (4) applies.
- (4) The grounds of release are—
 - (a) that a procurator fiscal has decided not to take proceedings in respect of any offence in relation to which the fish were seized,
 - (b) where a fixed penalty notice has been issued in respect of such an offence, that the appropriate fixed penalty has been paid,
 - (c) that any proceedings taken in respect of such an offence have concluded without any order for forfeiture having been made.
- (5) If any of the grounds of release mentioned in subsection (4) applies, the Scottish Ministers must, as soon as is reasonably practicable, release the proceeds of sale to any person who appears to the Scottish Ministers to have been an owner of the fish at the time of the seizure of the fish.
- (6) If the proceeds of sale are still in the Scottish Ministers' possession after the end of the period of 6 months beginning with the date on which the fish were sold, the Scottish Ministers may retain the proceeds and apply them in any manner they think fit.
- (7) The Scottish Ministers may exercise their power under subsection (6) to retain and apply the proceeds of sale only if it is not practicable at the time when the power is exercised to dispose of the proceeds by releasing them immediately to the person to whom they are required to be released.
- (8) Subject to subsection (11), any fish sold under this section must be sold at auction.

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- (9) Before selling the fish, the Scottish Ministers must give the owner of the fish a reasonable opportunity to make representations as to the manner in which the fish are sold.
- (10) Subsection (11) applies if the owner of the fish requests that the fish be sold—
 - (a) at a particular auction, or
 - (b) by a method of sale other than by auction.
- (11) The Scottish Ministers must comply with the request unless they consider the request to be unreasonable.
- (12) The Scottish Ministers may deduct from the proceeds of sale any reasonable expenses incurred by them in selling the fish.
- (13) Where there is more than one owner of the fish, subsection (11) applies only if the request under subsection (10) is made by or on behalf of all the owners.

45 Disposal of property retained by Scottish Ministers under section 43

- (1) This section applies to any property being retained by the Scottish Ministers under section 43 which they—
 - (a) no longer wish to retain for any purpose, or
 - (b) are required to make available for collection by virtue of that section.
- (2) In this section, a “notice of collection” is a notice stating that—
 - (a) the property specified in the notice is available to be collected from the location so specified, and
 - (b) if the property is not collected before the end of the period of 3 months beginning with the date specified in the notice, the Scottish Ministers will dispose of the property.
- (3) The Scottish Ministers must serve a notice of collection on every person who appears to them to be an owner of the property.
- (4) The Scottish Ministers may take any other steps they consider appropriate to notify every such person that the property is available to be collected.
- (5) If the Scottish Ministers, after taking reasonable steps to do so, are unable to identify any person as owning the property, they must—
 - (a) if it is reasonably practicable to do so, serve a notice of collection on every person who is an appropriate person for the purposes of this subsection, and
 - (b) take such steps as they think fit to bring the information contained in the notice of collection to the attention of persons likely to be interested in it.
- (6) For the purposes of subsection (5) each of the following is an “appropriate person”—
 - (a) in the case of property seized from a vessel, the master, owner and charterer (if any) of the vessel at the time of the seizure of the property,
 - (b) 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,
 - (c) in any other case, the person (if any) from whom the property was seized.

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- (7) If the Scottish Ministers comply with subsection (3) or (as the case may be) (5), they may, at the end of the period mentioned in subsection (2)(b), dispose of the property in whatever way they think fit.

Forfeiture

46 Forfeiture of prohibited items

- (1) This section applies to any item—
- (a) seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation, and
 - (b) which was seized—
 - (i) in the Scottish enforcement area, or
 - (ii) on board a Scottish fishing boat.
- (2) The item is liable to forfeiture under this section if the use of the item for sea fishing would in any circumstances constitute an offence under the law of Scotland.
- (3) An item forfeited under this section is to be forfeited to the Scottish Ministers who may dispose of it in any manner they think fit.

47 Forfeiture of fish failing to meet size requirements

- (1) This section applies to any fish—
- (a) seized by a British sea-fishery officer in the exercise of any power conferred by the sea fisheries legislation, and
 - (b) which were seized—
 - (i) in the Scottish enforcement area, or
 - (ii) on board a Scottish fishing boat.
- (2) The fish are liable to forfeiture under this section if, by virtue of the fish failing to meet requirements as to size, an offence under the law of Scotland has been committed in respect of the fish.
- (3) Any fish forfeited under this section are to be forfeited to the Scottish Ministers who may dispose of the fish in any manner they think fit.

48 Further provision about forfeiture under section 46 or 47

Schedule 2, which makes further provision about forfeiture under section 46 or 47, has effect.

Inshore sea fishing

49 Contravention of orders prohibiting inshore sea fishing

- (1) The Inshore Fishing (Scotland) Act 1984 is amended in accordance with this section.
- (2) In section 4 (offences), after subsection (1A) insert—
- “(1B) A person commits an offence if—

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- (a) the person is found in, or in the immediate vicinity of, the area specified in an order under section 1 of this Act;
- (b) the person is found there at, or about, a time at which the prohibition under the order applies;
- (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 fishing in contravention of the order; and
- (d) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the person intends to fish in contravention of the order.”.

(3) After section 4 insert—

“4A Contravention of orders under section 1: presumption

- (1) Subsection (2) applies in proceedings against a person (“the accused”) for an offence under section 4(1) of this Act involving fishing in contravention of a prohibition contained in an order under section 1 of this Act (other than a prohibition under section 1(2)(d)).
- (2) It is to be presumed that the accused was, or had been, fishing in contravention of the order if—
 - (a) it is proved that—
 - (i) the accused was found in, or in the immediate vicinity of, the area specified in the order;
 - (ii) the accused was found there at, or about, a time at which the prohibition under the order applies; 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, fishing in contravention of the order.
- (3) The things are—
 - (a) such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of fishing in contravention of the order;
 - (b) sea fish the fishing for which is prohibited by the order.
- (4) Subsection (2) does not apply if evidence is adduced sufficient to raise an issue as to whether—
 - (a) the accused’s presence in, or in the vicinity of, the area specified in the order was for the purpose of fishing in contravention of the order; 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 sea fish mentioned in paragraph (b) of that subsection, the fish were caught or taken in contravention of the order.”.

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50 Powers of entry

- (1) The Inshore Fishing (Scotland) Act 1984 is amended in accordance with this section.
- (2) After section 6 insert—

“6A Power to enter land

- (1) The powers conferred by this section are exercisable by British sea-fisheries officers in relation to any land for the purposes of enforcing the provisions of any order under section 1 of this Act and the provisions of section 3 of this Act.
- (2) Any such officer may at any time enter any land (including the foreshore) other than a dwelling house, on foot or in a vehicle, with or without persons assigned to the officer in the officer’s duties, 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.
- (3) Any officer who proposes to exercise the power of entry conferred by subsection (2) above must, if so requested, produce evidence of the officer’s identity.
- (4) A person commits an offence if the person—
 - (a) wilfully obstructs a British sea-fishery officer exercising a right of entry under subsection (2) above;
 - (b) refuses or fails to comply with a requirement imposed by such an officer under paragraph (c) or (d) of that subsection.
- (5) It is a defence for a person charged with an offence under subsection (4)(b) above of failing to comply with a requirement mentioned in that subsection to show that the person had a reasonable excuse for failing to so comply.
- (6) A constable may arrest without warrant any person who the constable reasonably believes is committing or has committed an offence under subsection (4) above.
- (7) Subsection (6) above is without prejudice to any power of arrest conferred by law apart from that subsection.
- (8) A person who commits an offence under subsection (4) above is liable—
 - (a) on summary conviction to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment to a fine.
- (9) A British sea-fishery officer is not liable in any civil or criminal proceedings for anything done in purported exercise of the powers conferred on the officer by this section, if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.”

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(3) After section 10 insert—

“10A Crown application: Scotland

- (1) Section 6A 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 that section 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.”.

Enforcement of EU rules

51 Modification of the Fisheries Act 1981: enforcement of EU rules

- (1) Section 30 of the Fisheries Act 1981 (enforcement of Community obligations) is amended in accordance with this section.
- (2) In subsection (1)—
 - (a) for paragraph (a) substitute—

“(a) if any fishing boat within the Scottish Zone—
 - (i) fishes in contravention of any such restriction; or
 - (ii) fails to comply with any such obligation,the master, the owner and the charterer (if any) are each guilty of an offence;”
 - (b) after paragraph (a) insert—
 - “(aa) if any Scottish fishing boat outside the Scottish Zone—
 - (i) fishes in contravention of any such restriction; or
 - (ii) fails to comply with any such obligation,the master, the owner and the charterer (if any) are each guilty of an offence;
 - (ab) if any person in Scotland—
 - (i) fishes in contravention of any such restriction; or
 - (ii) fails to comply with any such obligation,

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- the person is guilty of an offence;”,
- (c) in paragraph (b), for “such offences” substitute “offences under paragraph (a), (aa) or (ab) of this subsection”,
 - (d) in subsection (3), after the definition of “the Ministers” insert—
 - ““Scottish fishing boat” means a fishing boat which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Scotland as the port to which the boat is to be treated as belonging;
 - “Scottish Zone” has the same meaning as in the Scotland Act 1998 (see section 126(1) and (2) of that Act).”.

Supplementary

52 Conclusion of proceedings

- (1) This section applies for determining when any proceedings have concluded for the purposes of this Part.
- (2) Where proceedings are terminated by an appealable decision, they are not to be regarded as concluded—
 - (a) until the end of the ordinary time for appeal against the decision, if no appeal in respect of the decision is brought within that time, or
 - (b) if an appeal in respect of the decision is brought within that time, until the conclusion of the appeal.
- (3) Subsection (2) applies for determining when any proceedings on appeal are concluded for the purposes of paragraph (b) of that subsection as it applies for determining when the original proceedings are concluded.
- (4) Any reference in subsection (2) to a decision that terminates proceedings includes a reference to a verdict, sentence, finding or order that puts an end to the proceedings.

53 Interpretation of Part 3

- (1) In this Part—
 - “appropriate fixed penalty” has the meaning given in section 27(2) of the Aquaculture and Fisheries (Scotland) Act 2007 (amount and payment of fixed penalty),
 - “fish” includes shellfish,
 - “fixed penalty notice” means a fixed penalty notice under section 25(1) of the Aquaculture and Fisheries (Scotland) Act 2007,
 - “the Scottish enforcement area” means—
 - (a) Scotland, and
 - (b) the Scottish zone,
 - “Scottish fishing boat” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Scotland as the port to which the boat is to be treated as belonging,
 - “the Scottish zone” has the same meaning as in the Scotland Act 1998 (see section 126(1) and (2) of that Act),

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“sea fisheries legislation” means, subject to subsection (2)—

- (a) any enactment relating to sea fishing, including any enactment relating to fishing for shellfish, salmon or migratory trout, and
- (b) any enforceable EU restrictions and enforceable EU obligations relating to sea fishing.

(2) “Sea fisheries legislation” does not include—

- (a) the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003, or
- (b) any Order in Council under section 111 of the Scotland Act 1998 (regulation of Border rivers).

PART 4

SHELLFISH

Protection of shellfish waters

54 Protection and improvement of shellfish waters

- (1) The Water Environment and Water Services (Scotland) Act 2003 is amended in accordance with this section.
- (2) After section 5 insert—

“5A Shellfish water protected areas

- (1) The Scottish Ministers may by order (in this section, a “designation order”) designate an area of coastal water or transitional water as a shellfish water protected area for the purposes of this Part.
- (2) An area of coastal water or transitional water may be designated under subsection (1) only if the Scottish Ministers consider it necessary or desirable to do so for the protection or development of economically significant shellfish production.
- (3) The Scottish Ministers must review each designation order—
 - (a) by 22 December 2019, and
 - (b) by each date falling every 6 years (or such lesser period as the Scottish Ministers may determine) after 22 December 2019.
- (4) Subsection (3) applies to a designation order which comes into force after 22 December 2019 as if paragraph (a) were omitted.
- (5) A designation order which would, apart from this subsection, fall to be reviewed under subsection (3) by a particular date need not be reviewed by that date if the order came into force less than 6 months before that date; but must otherwise be reviewed in accordance with that subsection.
- (6) A designation order may identify the area of coastal water or transitional water by reference to a map prepared for the purposes of the order and laid before the Scottish Parliament.

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- (7) The Scottish Ministers must send SEPA a copy of—
- (a) a designation order, and
 - (b) any map prepared in pursuance of subsection (6).”.
- (3) In section 7 (register of protected areas), in subsection (3), before paragraph (a) insert—
- “(za) any shellfish water protected area.”.
- (4) In section 9 (environmental objectives and programmes of measures)—
- (a) in subsection (1), in paragraph (a)—
 - (i) the words “each body of water in the district, and” become sub-paragraph (i) of that paragraph, and
 - (ii) after that sub-paragraph insert—
 - “(ii) each shellfish water protected area in the district, and”.
 - (b) in subsection (7)—
 - (i) after “objectives” insert—
 - “(a) in respect of any body of water,”.
 - (ii) at the end insert “, and”
 - (b) in respect of a shellfish water protected area, includes (without prejudice to the definition in paragraph (a)) such objectives as SEPA considers necessary or desirable to improve or protect that area in order to support shellfish life and growth and to contribute to the high quality of shellfish products suitable for human consumption.”.
- (5) In section 11 (river basin management plans: publicity and consultation), in subsection (6), after paragraph (f) insert—
- “(fa) where any part of the river basin district has been designated as a shellfish water protected area, the Food Standards Agency,”.
- (6) In section 28 (interpretation of Part 1), in subsection (1), after the definition of “SEPA” insert—
- ““shellfish” includes crustaceans and molluscs of any kind, and includes any brood, ware, half-ware, spat or spawn of shellfish,
 “shellfish water protected area” means an area of coastal water or transitional water designated by order under section 5A(1).”.

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,

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- (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—
- (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—

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- (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,

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- (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.

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- (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.

PART 5

MISCELLANEOUS

Charging

59 Power to charge in connection with fisheries functions

- (1) The Scottish Ministers may by regulations make provision for or about the imposition of charges in connection with the carrying out of such fisheries functions as are specified in the regulations.
- (2) In this section, “fisheries functions” means—
 - (a) functions of the Scottish Ministers under any legislation relating to—
 - (i) fish farming or shellfish farming,
 - (ii) salmon or freshwater fisheries,
 - (iii) sea fishing, or

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- (b) functions of any other person under any such legislation so far as the person is appointed or authorised by the Scottish Ministers for the purposes of enforcing, or otherwise ensuring compliance with, the legislation.
- (3) Regulations under subsection (1) may include provision—
- (a) specifying, or for determining, the amount of charges,
 - (b) specifying, or for determining, the persons or types of person who are to pay charges,
 - (c) specifying, or for determining, the circumstances in which charges are payable,
 - (d) for making the carrying out of specified fisheries functions conditional on the payment of charges,
 - (e) for the imposition of annual or other recurring charges,
 - (f) for the reduction or waiver of, or exemptions from, charges,
 - (g) for the recovery and collection of charges,
 - (h) for the method and timing of payment of charges,
 - (i) for determining disputes as to the amount of, or liability for, charges.
- (4) Regulations under subsection (1)—
- (a) may have the effect of requiring a person to pay a charge only if, and so far as, the person is someone in relation to whom a specified fisheries function has been, or is to be, carried out, and
 - (b) must not have the effect of imposing a charge in a particular case that exceeds the reasonable costs incurred in the carrying out of a specified fisheries function in that case.
- (5) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.
- (6) Regulations under subsection (1) may make different provision for—
- (a) different fisheries functions,
 - (b) different persons or types of person.
- (7) Regulations under subsection (1) do not affect any power that the Scottish Ministers have apart from this section to—
- (a) impose fees or charges, or recover costs, in connection with the carrying out of any fisheries functions, or
 - (b) provide for the imposition of such fees or charges or the recovery of such costs.
- (8) In this section, “legislation” means any—
- (a) enactment, or
 - (b) EU instrument containing an enforceable EU obligation or an enforceable EU restriction.

Fixed penalty notices

60 Fixed penalty notices

- (1) Part 4 of the Aquaculture and Fisheries (Scotland) Act 2007 (sea fisheries) is amended in accordance with this section.

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(2) In section 25 (issue of fixed penalty notices)—

- (a) in subsection (1), for “British sea-fishery” substitute “fixed penalty”,
- (b) in subsection (2)—
 - (i) the words “is an offence” are repealed,
 - (ii) for paragraphs (a) and (b) substitute—
 - “(a) is an offence under the Sea Fisheries enactments in respect of which a person mentioned in paragraph (a) of subsection (2A) has functions,
 - (b) is an offence under the marine protection and nature conservation legislation in respect of which a person mentioned in paragraph (b) of that subsection has functions,
 - (c) is an offence under—
 - (i) Part 4 of the Marine (Scotland) Act 2010 (marine licensing), or
 - (ii) section 5(5) of the Aquaculture and Fisheries (Scotland) Act 2013 (control and monitoring of operation of wellboats),
 - (d) in relation to a person mentioned in any of paragraphs (c) to (f) of that subsection, is an offence in respect of which the person has functions.”,

(c) after subsection (2) insert—

“(2A) The persons referred to in subsection (2) are—

- (a) a British sea-fishery officer,
- (b) a marine enforcement officer within the meaning of section 157(1) of the Marine (Scotland) Act 2010,
- (c) an inspector within the meaning of section 12 of this Act,
- (d) an inspector within the meaning of regulation 3(1) of the Aquatic Animal Health (Scotland) Regulations 2009 ([S.S.I. 2009/85](#)),
- (e) an inspector within the meaning of regulation 1(2) of the Animals and Animal Products (Import and Export) Regulations 2007 ([S.S.I. 2007/194](#)) who is appointed as mentioned in that regulation by the Scottish Ministers for purposes relating to fish farming or shellfish farming,
- (f) an authorised officer within the meaning of regulation 2(1) of the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997 ([S.I. 1997/1729](#)) appointed (whether solely or jointly) by the Scottish Ministers to act in matters arising under those Regulations relating to fish farming or shellfish farming or the products of either such type of farming.

(2B) The Scottish Ministers may by order modify—

- (a) subsection (2) so as to amend the definition of “relevant offence”,
- (b) subsection (2A) so as to—

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- (i) add or remove a description of a person to or from those for the time being listed in that subsection,
- (ii) vary a description of a person for the time being listed in that subsection.

(2C) In subsection (2A)(e) and (f), “fish farming” and “shellfish farming” have the same meanings as in section 12.

(2D) Despite subsection (1), a fixed penalty officer may not issue a notice in respect of a relevant offence that involves—

- (a) assault on a person mentioned in subsection (2A),
- (b) obstructing such a person in the exercise of the person’s powers,
- (c) failure to comply with a requirement imposed, or instruction given, by such a person.”,

(d) in subsection (3)—

- (i) after the definition of “British sea-fisheries officer” insert—
““fixed penalty officer” means a person appointed as such an officer by the Scottish Ministers;”,
- (ii) after the definition of “Sea Fisheries enactments” insert—
““the marine protection and nature conservation legislation” has the meaning given in section 132(2) of the Marine (Scotland) Act 2010;”.

(3) In section 27 (amount and payment of fixed penalty)—

- (a) in subsection (1), for “80 per cent of level 4 on the standard scale” substitute “£10,000”,
- (b) in subsection (2), for “British sea-fishery” substitute “fixed penalty”.

(4) In section 31 (withdrawal of fixed penalty notice or expiry of period for paying), in subsection (1), for “British sea-fishery” substitute “fixed penalty”.

(5) For the title of Part 4 substitute “Fixed penalty notices”.

(6) The cross-heading immediately following that title is repealed.

(7) For the cross-heading immediately preceding section 32, substitute the following Part title—

“PART 4A

– *Miscellaneous amendments of sea fisheries legislation*”.

61 Fixed penalty notices and civil sanctions under the Marine (Scotland) Act 2010

(1) Schedule 2 to the Marine (Scotland) Act 2010 (further provision about civil sanctions under Part 4 (marine licensing)) is amended in accordance with this section.

(2) For paragraph 1 (interpretation) substitute—

“1 In this schedule—

“civil sanction” means a fixed monetary penalty or a variable monetary penalty,

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“fixed penalty notice” means a fixed penalty notice under section 25(1) of the Aquaculture and Fisheries (Scotland) Act 2007, “fixed penalty officer” has the meaning given in section 25(3) of that Act.”.

(3) In paragraph 2 (fixed monetary penalties: other sanctions), after sub-paragraph (2)(b) insert—

“(c) a fixed penalty officer may not issue a fixed penalty notice to the person in respect of the act or omission giving rise to the fixed monetary penalty.”.

(4) In paragraph 3 (variable monetary penalties: other sanctions), after sub-paragraph (b) insert—

“(c) a fixed penalty officer may not issue a fixed penalty notice to the person in respect of the act or omission giving rise to the variable monetary penalty.”.

(5) After paragraph 4, insert—

“Civil sanctions and fixed penalty notices

4A (1) Provision under section 46 must secure that, in a case where a fixed penalty notice is issued to a person in respect of a relevant offence, the Scottish Ministers may not—

- (a) serve on the person a notice of intent referred to in section 47(2) (a) in relation to an act or omission constituting the relevant offence, or
- (b) impose a fixed monetary penalty on the person in relation to an act or omission constituting the relevant offence.

(2) Provision under section 48 must secure that, in a case where a fixed penalty notice is issued to a person in respect of a relevant offence, the Scottish Ministers may not—

- (a) serve on the person a notice of intent referred to in section 49(2) (a) in relation to an act or omission constituting the relevant offence, or
- (b) impose a variable monetary penalty on the person in relation to an act or omission constituting the relevant offence.

(3) In this paragraph “relevant offence” has the meaning given in section 25(2) of the Aquaculture and Fisheries (Scotland) Act 2007.”.

PART 6

GENERAL

62 Subordinate legislation

(1) Any power of the Scottish Ministers to make an order or regulations under this Act includes power to make—

- (a) different provision for different purposes or different areas,

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- (b) incidental, supplemental, consequential, transitional, transitory or saving provision.
- (2) The following orders and regulations are subject to the affirmative procedure—
 - (a) regulations under section 59,
 - (b) an order under section 64(1) containing provisions which add to, replace or omit any part of the text of an Act.
- (3) All other orders and regulations under this Act are subject to the negative procedure.
- (4) This section does not apply to an order under section 66(2).

63 Interpretation

In this Act, unless the context otherwise requires—

“British sea-fishery officer” means a person who is a British sea-fishery officer by virtue of section 7(1) of the Sea Fisheries Act 1968,

“disease” means a clinical or non-clinical infection with one or more aetiological agents in fish,

“enforceable EU obligation” means an obligation to which section 2(1) of the European Communities Act 1972 applies,

“enforceable EU restriction” means a restriction to which that section applies,

“fish” means fish of any kind but does not, except in Part 3, include shellfish,

“fish farm” means any place used for the purposes of fish farming,

“fish farming” means the keeping of live fish with a view to their sale or to their transfer to other waters; but only where such activity is required to be authorised as an aquaculture production business under regulation 6 of the Aquatic Animal Health (Scotland) Regulations 2009 ([S.S.I. 2009/85](#)),

“marine enforcement officer” has the same meaning as in section 157(1) of the Marine (Scotland) Act 2010,

“parasite” has the meaning given in section 4(1) of the Aquaculture and Fisheries (Scotland) Act 2007,

“pathogen” means an organism that causes or contributes to the development of a disease,

“shellfish” includes crustaceans and molluscs of any kind, and includes any brood, ware, half-ware, spat or spawn of shellfish,

“shellfish farm” means any place used for the purposes of shellfish farming,

“shellfish farming” means the cultivation or propagation of shellfish with a view to their sale or their transfer to other waters or land; but only where such activity is required to be authorised as an aquaculture production business under regulation 6 of the Aquatic Animal Health (Scotland) Regulations 2009 ([S.S.I. 2009/85](#)).

64 Ancillary provision

- (1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) An order under this section may modify any enactment (including this Act), instrument or document.

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65 Crown application

- (1) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.
- (2) 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.
- (3) Despite subsection (1), any provision made by or under the provisions of this Act applies to persons in the public service of the Crown as it applies to other persons.

66 Commencement

- (1) This Part, and sections 4, 22 and 53, come into force on the day after Royal Assent.
- (2) The remaining provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may include transitional, transitory or saving provision.

67 Short title

The short title of this Act is the Aquaculture and Fisheries (Scotland) Act 2013.

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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.

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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.

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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.