



Aquaculture and Fisheries (Scotland) Act 2007

2007 asp 12

PART 1

FISH FARMS AND SHELLFISH FARMS

Information

1 Information about fish farms and shellfish farms

- (1) The Scottish Ministers may make an order if it appears to them necessary or expedient to do so for the purpose of obtaining information in relation to the prevention, control and reduction of parasites—
 - (a) on fish farms,
 - (b) on shellfish farms.
- (2) An order under subsection (1) may require any person who carries on a business of fish farming or shellfish farming—
 - (a) to provide to the Scottish Ministers such information, in writing, as may be specified in the order in relation to the purpose mentioned in that subsection,
 - (b) to compile such records as may be so specified in relation to that purpose,
 - (c) to retain for such period (not exceeding 3 years) as may be so specified, any records compiled by virtue of paragraph (b).
- (3) The Scottish Ministers may make an order if it appears to them necessary or expedient to do so for the purpose of obtaining information in relation to—
 - (a) the containment of fish on fish farms,
 - (b) the prevention of escape of fish from fish farms,
 - (c) the recovery of escaped fish.
- (4) An order under subsection (3) may require any person who carries on a business of fish farming—
 - (a) to provide to the Scottish Ministers such information, in writing, as may be specified in the order in relation to the purpose mentioned in that subsection,

- (b) to compile such records as may be so specified in relation to that purpose,
 - (c) to retain for such period (not exceeding 3 years) as may be so specified, any records compiled by virtue of paragraph (b).
- (5) An inspector may require the production of, and inspect and take copies of, any records which a person is required to retain by virtue of an order under this section.
- (6) Information provided, records compiled and records retained by virtue of an order under this section may be provided, compiled and retained electronically.

2 Information: offences

- (1) A person commits an offence who—
 - (a) fails, without reasonable excuse, to comply with a requirement of an order under section 1,
 - (b) in purported compliance with a requirement of an order under section 1 knowingly provides any information or compiles a record which is false in a material particular,
 - (c) knowingly alters a record compiled in accordance with a requirement of an order under section 1 so that the record becomes false in a material particular.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Parasites

3 Inspections: parasites

- (1) An inspector may carry out inspections of—
 - (a) fish farms,
 - (b) shellfish farms,for the purposes mentioned in subsection (2).
- (2) The purposes are—
 - (a) ascertaining the levels (if any) of parasites,
 - (b) assessing the measures in place for the prevention, control and reduction of parasites.
- (3) In particular, an inspection under subsection (1) may include—
 - (a) taking samples (including samples of or from fish and shellfish),
 - (b) examining, and taking copies of, documents or records.
- (4) 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 purposes mentioned in subsection (2).

4 Meaning of parasite in Part 1

- (1) In this Part, “parasite” means any of the following—
 - (a) *Caligus elongatus*,
 - (b) *Lepeophtheirus salmonis*.

- (2) The Scottish Ministers may by order modify the meaning of parasite in subsection (1).

Containment and escape: fish

5 Inspections: containment and escape of fish

- (1) An inspector may carry out inspections of fish farms for any of the purposes mentioned in subsection (2).
- (2) The purposes are—
- (a) ascertaining the risk of escape of fish from the fish farm,
 - (b) ascertaining whether fish have escaped from the fish farm,
 - (c) assessing the measures in place for—
 - (i) the containment of fish on the fish farm,
 - (ii) the prevention of escape of fish from the fish farm,
 - (iii) the recovery of escaped fish.
- (3) In particular, an inspection under subsection (1) may include—
- (a) taking samples (including samples of equipment),
 - (b) examining, and taking copies of, documents or records.
- (4) 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 any of the purposes mentioned in subsection (2).

Enforcement

6 Enforcement notices

- (1) Where the Scottish Ministers are satisfied that a person who carries on a business of fish farming does not have satisfactory measures in place for any of the purposes mentioned in subsection (2) in respect of the fish farm, the Scottish Ministers may serve a notice (“an enforcement notice”) on the person.
- (2) The purposes are—
- (a) the prevention, control and reduction of parasites,
 - (b) the containment of fish,
 - (c) the prevention of escape of fish,
 - (d) the recovery of escaped fish.
- (3) Where the Scottish Ministers are satisfied that a person who carries on a business of shellfish farming does not have satisfactory measures in place for the purpose of the prevention, control and reduction of parasites in respect of the shellfish farm, the Scottish Ministers may serve a notice (“an enforcement notice”) on the person.
- (4) An enforcement notice served under subsection (1) may require—
- (a) the execution of such works,
 - (b) the taking of such other steps,
- as the Scottish Ministers consider necessary for any of the purposes mentioned in subsection (2).

- (5) An enforcement notice served under subsection (3) may require—
 - (a) the execution of such works,
 - (b) the taking of such other steps,
 as the Scottish Ministers consider necessary for the purpose mentioned in that subsection.
- (6) An enforcement notice must specify the date by which the requirements of the notice, or any particular requirements of it, are to be fulfilled.
- (7) A person on whom an enforcement notice has been served may, by summary application made before the expiry of the period of 7 days beginning with the day on which the notice is served, appeal to the sheriff against the notice; and the notice is of no effect until the appeal is withdrawn or finally determined.
- (8) In an appeal under subsection (7), the sheriff may make such order as the sheriff thinks fit; and the decision of the sheriff in the appeal is final.
- (9) A person commits an offence if, without reasonable excuse, the person contravenes an enforcement notice.
- (10) A person who commits an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (11) Where the Scottish Ministers are satisfied that an enforcement notice is contravened in respect of the prevention, control and reduction of parasites, they may (whether or not proceedings have been taken for an offence under subsection (9)) authorise an inspector to take any action they consider necessary in fulfilment of the requirements of the notice in that regard.
- (12) Any expenses reasonably incurred by an inspector in taking action authorised under subsection (11) may be recovered by the Scottish Ministers from the person on whom the enforcement notice was served.
- (13) The Scottish Ministers may publicise the serving of an enforcement notice; and may do so to such extent, in such manner and in such form as they think fit.

Code of practice

7 Code of practice

- (1) The Scottish Ministers may by order approve, whether in whole or in part, any code of practice issued (whether by them or by another person) for any of the purposes of—
 - (a) giving practical guidance to persons who carry on a business of—
 - (i) fish farming,
 - (ii) shellfish farming,
 - (b) promoting what appear to the Scottish Ministers to be desirable practices by such persons,
 with respect to any of the matters mentioned in subsection (2).
- (2) The matters are—
 - (a) the prevention, control and reduction of parasites on—
 - (i) fish farms,

- (ii) shellfish farms,
 - (b) the containment of fish on fish farms,
 - (c) the prevention of escape of fish from fish farms,
 - (d) the recovery of escaped fish.
- (3) The Scottish Ministers may at any time by order approve a modification of an approved code or withdraw approval of such a code or modification.
- (4) Before making an order under this section the Scottish Ministers must consult such persons as they consider appropriate.

8 Monitoring and enforcement: code of practice

- (1) The Scottish Ministers are to monitor compliance with any approved code.
- (2) Where the Scottish Ministers are satisfied that a person who carries on a business of—
 - (a) fish farming,
 - (b) shellfish farming,is not complying with an approved code in a material regard, the Scottish Ministers may serve a notice on that person.
- (3) Where it appears to the Scottish Ministers that a person who carries on a business of—
 - (a) fish farming,
 - (b) shellfish farming,is likely not to comply with an approved code in a material regard, the Scottish Ministers may serve a notice on the person.
- (4) A notice served by virtue of subsection (2) or (3) may require—
 - (a) the execution of such works,
 - (b) the taking of such other steps,as the Scottish Ministers consider necessary for securing compliance with the approved code in any particular respect.
- (5) Subsections (6) to (13) of section 6 apply to a notice served by virtue of subsection (2) or (3) as they apply to an enforcement notice.

Powers of inspectors and offences

9 Powers of inspectors: entry

- (1) An inspector may enter any fish farm or shellfish farm for the purposes of—
 - (a) ascertaining whether any power conferred by or under this Part should be exercised,
 - (b) doing anything in pursuance of the exercise of that power.
- (2) An inspector acting under subsection (1) must, if required, produce evidence of the inspector's authority.
- (3) Any power of entry conferred on an inspector by or under this Part must be exercised at a reasonable hour unless the inspector considers the case is one of urgency.

10 Entry: supplementary

- (1) This section applies to any inspector exercising any power of entry conferred on an inspector by or under this Part.
- (2) The inspector may take with the inspector—
 - (a) such other persons,
 - (b) such equipment and vehicles,
 as the inspector considers necessary.
- (3) The inspector may require any person on a fish farm or shellfish farm who falls within subsection (4) to give the inspector such assistance as the inspector may reasonably require.
- (4) The following persons fall within this subsection—
 - (a) the person who carries on the business of fish farming or shellfish farming,
 - (b) any other person appearing to the inspector to be under the direction or control of that person,
 - (c) any other person appearing to the inspector to be concerned with the operation of the farm.

11 Offences: general

- (1) A person commits an offence who—
 - (a) fails, without reasonable excuse, to comply with a requirement imposed by an inspector by virtue of this Part,
 - (b) obstructs an inspector in the exercise of the inspector's powers under this Part.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

*Interpretation of Part 1***12 Interpretation: Part 1**

In this Part, unless the context otherwise requires—

“approved code” means a code of practice approved, for the time being, by an order under section 7; and includes any part or modification of a code of practice so approved;

“fish” does not include shellfish but otherwise means fish of any kind;

“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 registered as a business by virtue of section 7(2) or (3) of the 1983 Act;

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

“inspector” means a person authorised by the Scottish Ministers to act as an inspector under this Act, either generally or for the particular purpose in question;

“parasite” has the meaning given by section 4(1);

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

“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 registered as a business by virtue of section 7(4) of the 1983 Act;

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