



# Aquaculture and Fisheries (Scotland) Act 2007

2007 asp 12

## PART 5

### MISCELLANEOUS

#### 34 **Unauthorised introduction of fish into certain marine waters**

After section 2B of the 1937 Act (designated areas: authority to remove fish), insert—

##### **“2C Unauthorised introduction of fish into certain marine waters**

- (1) With a view to preventing any marine waters adjacent to Scotland from becoming infected waters, the Scottish Ministers may by order made by statutory instrument specify such parts of those waters as they consider appropriate.
- (2) Before making an order under subsection (1) the Scottish Ministers must consult such persons as they consider appropriate.
- (3) An area specified under subsection (1) is a “specified area” for the purposes of this section.
- (4) A person is guilty of an offence who, without the prior written consent of the Scottish Ministers, intentionally introduces into waters within a specified area live fish which—
  - (a) are of such species as may be specified by the Scottish Ministers by order;
  - (b) are from waters which are not part of that specified area; and
  - (c) have at any time been in salt water which forms part of—
    - (i) such inland waters of the United Kingdom as may be designated by the Scottish Ministers by order; or
    - (ii) such marine waters adjacent to the United Kingdom as may be so designated.

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- (5) The Scottish Ministers may make regulations in relation to the obtaining of the consent mentioned in subsection (4) and in particular may include provision—
- (a) regulating the form of the application for such consent;
  - (b) specifying the information to be provided and any assessment to be undertaken as part of an application;
  - (c) specifying the time by which an application must be made before the proposed introduction of the fish.
- (6) Regulations under subsection (5) may make different provision for different purposes.
- (7) The power conferred by—
- (a) subsection (1) or (4)(a) or (c)(i) or (ii) to make an order;
  - (b) subsection (5) to make regulations,
- must be exercised by statutory instrument; and a statutory instrument containing any such order or regulations is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (8) In subsection (1), “marine waters adjacent to Scotland” has the same meaning as in section 2ZB(6).”

#### Commencement Information

**II** S. 34 in force at 1.8.2007 by [S.S.I. 2007/333](#), [art. 2\(1\)](#)

### 35 Unauthorised introduction of fish into inland waters

- (1) Section 24 of the 2003 Act is repealed.
- (2) After section 33 of that Act (salmon fishing: regulations as to baits and lures), insert—

*“Unauthorised introduction of fish into inland waters*

#### **33A Unauthorised introduction of fish into inland waters**

- (1) A person shall be guilty of an offence if the person intentionally introduces any live fish or live spawn of any fish into inland waters.
- (2) A person shall be guilty of an offence if the person possesses any live fish or live spawn of any fish with the intention of introducing it into inland waters.
- (3) A person shall not be guilty of an offence under this section if—
  - (a) the inland waters concerned constitute or are included in a fish farm, or
  - (b) the appropriate authority have previously consented in writing.
- (4) Where—
  - (a) the fish concerned are salmon or the spawn concerned are salmon spawn, and
  - (b) the inland waters concerned are in a salmon fishery district for which there is a district salmon fishery board,

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the district salmon fishery board are the appropriate authority.

In any other case the Scottish Ministers are the appropriate authority.

- (5) Any person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) A person who commits an offence under this section may be convicted on the evidence of one witness.”.

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**Commencement Information**

**I2** S. 35 in force at 1.8.2008 by [S.S.I. 2007/333](#), [art. 2\(2\)](#)

### **36 Payments in respect of fish destroyed**

- (1) The Scottish Ministers may, in accordance with a scheme made by them by order, make payments in respect of any fish or shellfish destroyed in pursuance of the exercise of such powers of the Scottish Ministers under or by virtue of such enactments as may be specified by them by order.
- (2) An order under subsection (1) may, in particular, include provision—
  - (a) regulating applications for, and the method of payment of, any amount payable by virtue of this section,
  - (b) as to the amount payable and the basis on which those amounts are ascertained,
  - (c) as to conditions that must be met for payments to be made,
  - (d) as to circumstances where payments may not be made.
- (3) In subsection (1), “fish” and “shellfish” have the same meanings as in Part 1.

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**Commencement Information**

**I3** S. 36 in force at 1.8.2007 by [S.S.I. 2007/333](#), [art. 2\(1\)](#)

### **37 Payments for certain purposes**

- (1) The Scottish Ministers may make payments of such amount and subject to such conditions as they may determine to any person or group of persons for any of the purposes mentioned in subsection (2) in relation to any of the matters mentioned in subsection (3).
- (2) The purposes are—
  - (a) development,
  - (b) promotion,
  - (c) organisation,
  - (d) research.
- (3) The matters are—
  - (a) fish farming,
  - (b) shellfish farming,
  - (c) other aspects of aquaculture,

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- (d) sea fisheries,
  - (e) the sea fish industry,
  - (f) salmon fisheries,
  - (g) freshwater fisheries.
- (4) A payment under this section may be limited so as to be made in connection to a specified part or area of Scotland.
- (5) For the purposes of this section, a person is regarded as engaged in the sea fish industry if the person carries on or is employed in the business of catching, processing, transporting or selling sea fish or sea fish products.
- (6) In this section—
- [<sup>F1</sup> “ fish farming ” has the same meaning as in Part 1, except that businesses involved in such activity need not be authorised as an aquaculture production business under regulation 6 of the 2009 Regulations ; ]
  - “migratory trout” means any species of trout which migrates to and from the sea;
  - “salmon” includes any fish of the salmon species;
  - “sea fish” means fish of any kind found in the sea, including shellfish but not salmon or migratory trout;
  - “shellfish” has the same meaning as in Part 1;
  - [<sup>F2</sup> “ shellfish farming ” has the same meaning as in Part 1, except that businesses involved in such activity need not be authorised as an aquaculture production business under regulation 6 of the 2009 Regulations . ]

#### Textual Amendments

- F1** Words in s. 37(6) substituted (2.12.2011) by [The Aquatic Animal Health \(Miscellaneous Modifications\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/427\)](#), **reg. 3(3)(a)**
- F2** Words in s. 37(6) substituted (2.12.2011) by [The Aquatic Animal Health \(Miscellaneous Modifications\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/427\)](#), **reg. 3(3)(b)**

#### Commencement Information

- I4** S. 37 in force at 1.8.2007 by [S.S.I. 2007/333](#), **art. 2(1)**

### 38 Information about fish farming and shellfish farming: economic, social and environmental aspects

- (1) The Scottish Ministers may make an order under this section for the purpose of obtaining information in relation to the economic, social and environmental aspects of—
- (a) fish farming,
  - (b) shellfish farming.
- (2) An order under this section 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 subsection (1),
  - (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).

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- (3) 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 made under this section.
- (4) Information provided, records compiled and records retained under this section may be provided, compiled and retained electronically.
- (5) A person commits an offence who—
  - (a) fails, without reasonable excuse, to comply with a requirement of an order under this section,
  - (b) in purported compliance with a requirement of an order under this section 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 this section so that the record becomes false in a material particular.
- (6) 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.
- (7) In this section, “fish farming”, “inspector” and “shellfish farming” have the same meanings as in Part 1.

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**Commencement Information**

**I5** S. 38 in force at 1.8.2007 by [S.S.I. 2007/333](#), [art. 2\(1\)](#)

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