

# MARINE (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### THE ACT

#### Part 8 Sea Fisheries

#### Chapter 1: The Sea Fish (Conservation) Act 1967

#### *Section 158 - Extension of modifications relating to Sea Fish (Conservation) Act 1967*

220. *Section 158* applies to Scotland, the modifications to the Sea Fish (Conservation) Act 1967 made by Chapter 1 of Part 7 of, and Schedules 15 and 22 to, the Marine and Coastal Access Act 2009, with the exception of the modifications made by sections 194 (4) and (5), 196 and 198 (3) of, and paragraph 1(4) of schedule 15.
221. Section 1 of the Sea Fish (Conservation) Act 1967 enables the Scottish Ministers as regards Scotland to make an order to set minimum size limits for sea fish. An order under section 1 may: prohibit any person from landing sea fish below a specified size; prohibit the sale of sea fish below a specified size; and prohibit the carriage by a relevant British fishing boat of sea fish below the specified size. An order under section 1 may set different limits for different areas or for fish of different sexes and may restrict the landing by any person of parts of fish below the size limit set for that species.
222. Section 1 of the Sea Fish (Conservation) Act 1967 does not currently allow for a maximum size limit or for a size range to be set by an order or for the carriage restrictions to apply to a vessel not covered by the definition of a relevant British fishing vessel or Scottish fishing boat.
223. By applying section 194 of the Marine and Coastal Access Act 2009 to Scotland, section 158 amends section 1 of the of the Sea Fish (Conservation) Act 1967 as regards Scotland to provide for all the current powers available under orders made under that section to apply to any requirements as to size, rather than minimum size limits only, and for the prohibition on carriage to apply to all relevant British vessels. The effect of these amendments is to allow Scottish Ministers to make an order setting a minimum or a maximum size limit for sea fish or a size range outside which no fish may be landed, sold or carried.

#### **Regulation of nets and other fishing gear**

224. Section 3(1) of the Sea Fish (Conservation) Act 1967 enables the Scottish Ministers as regards Scotland to make an order in relation to relevant Scottish fishing boats applying restrictions to nets and other fishing gear in respect of their construction, design, material and size. An order under section 3 may apply only in relation to fishing for specified descriptions of sea fish, specified methods of fishing, and specified areas or periods.
225. Section 3(2) provides that an order may be made to extend to nets and fishing gear carried within British fishery limits (excluding the Scottish zone) by Scottish fishing

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boats, fishing boats registered outside the UK and unregistered boats. (This provision is modified as regards Scotland and section 3(2) enables the Scottish Ministers to make an order in relation to the Scottish zone in respect of relevant British fishing boats or fishing boats registered in any country outside the UK or not registered in any country).

226. In addition to other matters, section 3(3) and (4) provides for exemptions from the restrictions imposed by orders under section 3 of the Act to be made in relation to fishing boats. Section 3(5) of the Conservation Act creates offences for fishing in contravention of any orders made under section 3.
227. Currently, section 3 does not allow restrictions to apply equally to persons fishing from the shore as they apply to persons fishing from a boat.
228. By applying section 195 of the Marine and Coastal Access Act 2009 to Scotland section 158 amends section 3 so that restrictions of this type may be made by order in respect of persons fishing from the shore. Section 3 is also amended to create new offences for any person fishing from the shore in contravention of any restrictions and to allow for orders to exempt persons from the restrictions imposed.

### **Grant of licences subject to conditions imposed for environmental purposes**

229. Section 4 of the Sea Fish (Conservation) Act 1967 Act enables Ministers (the Scottish Ministers as regards Scotland) to prohibit fishing by fishing boats in any specified area within the Scottish Zone, except as authorised by a licence. Section 4(6) of the Act provides that licences may authorise fishing subject to conditions.
230. By applying section 197 of the Marine and Coastal Access Act 2009 to Scotland, section 141A amends section 4(6) to also allow the imposition of conditions for marine environmental purposes, as described.

### **Power to restrict fishing for sea fish**

231. Section 5 of the Sea Fish (Conservation) Act 1967 enables the Ministers (the Scottish Ministers as regards Scotland) to make an order restricting fishing for sea fish of any description and by any method specified for any period and creates an offence where any fishing boat is used in contravention of such an order. Any fish caught in contravention of a restriction of an order made under this section must be returned immediately to the sea. An order made under this section as regards Scotland to an area outside the Scottish Zone may apply only to Scottish Fishing boats, and to any boat within that zone.
232. Orders made under section 5 apply only to fishing boats and not to persons fishing from the shore. That section is amended so that orders may be made in relation to such persons. Offences are also created in respect of persons fishing in contravention of an order.
233. By applying section 198(1) and (2) of the Marine and Coastal Access Act 2009 to Scotland section 158 amends section 5(1) so that orders may also be made in relation to persons fishing from the shore. Amendments also provide for restrictions to be made in an order to place limits on how much fish a person or a fishing boat may take in any given period. Any fish caught in excess of this limit must be returned to the sea. The order may provide that any sea fish caught during the relevant period but returned to the sea as soon as the limit is exceeded do not count towards the limit imposed by the order in question. In addition, the amendments provide that an order which prohibits fishing for sea fish, or fishing for sea fish by any specified method, may require the stowage of fishing gear.

### **Penalties for offences**

234. Section 11 of the Sea Fish (Conservation) Act 1967 sets the levels of fine applicable for persons found guilty of offences under specified sections of that Act. Offences under

section 3, 4(9A) or 5(6) attract a fine not exceeding £5,000 on summary conviction or an unlimited fine on conviction on indictment. Offences under section 1, 2 or 6(5) attract a fine not exceeding the statutory maximum on summary conviction or an unlimited fine on conviction on indictment. By applying Section 199 of the Marine and Coastal Access Act 2009 to Scotland, section 158 amends section 11 to increase these levels of fine on summary conviction to a maximum of £50,000 or on indictment to an unlimited fine.

235. Section 15 of the Sea Fish (Conservation) Act 1967 provides penalties for certain offences relating to the enforcement of orders under that Act by British sea-fishery officers. By applying section 199 of the Marine and Coastal Access Act to Scotland section 158 amends section 15 to replace paragraph (b) of subsection (2C) with two new subsections which provide for maximum fines on summary conviction for the offences of obstructing or assaulting an enforcement officer in the exercise of his duties under section 15 of £20,000 and £50,000 respectively.
236. Section 16 of the Sea Fish (Conservation) Act 1967 provides for the enforcement of section 2 and orders made under section 1 of that Act. By applying section 199 of the Marine and Coastal Access Act 2009 to Scotland, section 158 amends section 16 to replace subsection (1A) with two new subsections which provide for maximum fines on summary conviction for the offences of obstructing or assaulting an enforcement officer in the exercise of his powers under subsection (1) of £20,000 and £50,000 respectively.

#### **Offences by directors, partners, etc.**

237. By applying section 200 of the Marine and Coastal Access Act 2009 to Scotland, section 158 replaces section 12 of the Sea Fish (Conservation) Act 1967 is replaced by a new section 12 which provides that, where offences under sections 1 to 6 of that Act have been committed by a body corporate, any officer, as defined, of the body corporate may be found to be guilty of that offence and liable to proceedings and fines. Officers will be liable in this way only where the offence has been committed with their consent or connivance or through their neglect. Similar provision is made in respect of offences committed by Scottish firms (partnerships).

#### **Minor and consequential amendments**

238. By applying section 201 of the Marine and Coastal Access Act 2009 to Scotland, section 158 makes the relevant, minor and consequential amendments contained in Schedule 15 to the Sea Fish (Conservation) Act 1967.

#### ***Section 159 - Modification of Section 22A of the Sea Fish (Conservation) Act 1967***

239. Section 22 A of the Sea Fish (Conservation) Act 1967 provides that the 1967 Act has effect in Scotland subject to certain modifications. Section 159 adapts for Scotland relevant provisions of the Marine and Coastal Access Act 2009 (as applied by section 158) by amending section 22A of the Sea Fish (Conservation) Act 1967.

#### ***Section 160 – Modifications relating to Sea Fisheries (Shellfish) Act 1967: Orders as to fisheries for shellfish***

240. This section makes amendments to the provisions of section 1 of the Sea Fisheries (Shellfish) Act 1967 relating to the power to make certain types of fishery orders (several and regulating orders).
241. Section 160 (1) amends section 1 of the Sea Fisheries (Shellfish) Act 1967 to remove the need to obtain Crown Estate consent to the making of several and regulating orders under section 1 of the Act.
242. Section 160 (2) extends to Scotland the modifications made by Section 203 of the Marine and Coastal Access Act 2009. In particular this enables the revocation or variation of an order to allow development on or over any portion of the sea shore to

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which a several or regulating order relates and provides for compensation to grantees of several fisheries affected by such development.

243. It also requires that before revoking or varying an order those with a right to an affected fishery must be consulted.
244. Section 160 (3) amends schedule 1 to the Sea Fisheries (Shellfish) Act 1967 to provide that when making a several or regulating Order Ministers must have regard to the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961.

***Section 161 – Further modifications relating to Sea Fisheries (Shellfish) Act 1967***

245. This section extends to Scotland the modifications made by sections 204, 206, 207, 209, 210, 211 (1) and (3), 214 and Part 5 (A) of Schedule 22 of the Marine and Coastal Access Act 2009.
246. In particular, it provides that regulating order grantees may use monies collected by way of tolls and royalties for purposes connected with the regulation of the fishery, not just for the improvement of the fishery.
247. It provides that, where a fishing boat is used in the commission of an offence under section 3(3) of the 1967 Act, the master, owner and charterer (if any) of the boat are each guilty of an offence and introduces a definition for the term “master” in line with that in the Sea Fish (Conservation) Act 1967.
248. It makes provision that applies uniformly across the UK for a regulating order grantee to impose restrictions or make regulations about the dredging, fishing for and taking of shellfish and to carry into effect and enforce those restrictions and regulations in the same way as may be done for regulations imposed by and restrictions made in the order itself.
249. It requires grantees of regulated fisheries to hold a register of current licence-holders' names and addresses and make it available for inspection free of charge. Copies may be issued and a charge may be made for doing so.
250. It extends the protection afforded to private oyster beds under section 7 of the Sea Fisheries (Shellfish) Act 1967 to all privately owned shellfish beds for the particular type of shellfish to which their rights of ownership relate.
251. It amends Section 7(4) of the Sea Fisheries (Shellfish) Act 1967 which currently provides that it is an offence to use any implement of fishing, apart from a line and hook or a net for catching floating fish, in any area where there is a right of several fishery or in a private oyster bed to enable Ministers to specify by or under an order other implements of fishing that may be used in such areas.
252. It also amends the requirement to appoint an inspector and provides Ministers with a discretionary power in making decisions on the appointment of an inspector and calling public inquiries except in cases where an objection receiving an objection raising a material concern is received, in which case the appropriate Minister must appoint an inspector.
253. It makes equivalent repeals as regards Scotland to those contained in Part 5(A) of Schedule 22 of the Marine and Coastal Access Act 2009.
254. **Section 161** modifies Section 1 ( of the Sea Fisheries (Shellfish) Act 1967 so that the reference to the Town and Country Planning Act 1990 (inserted as a result of the extension to Scotland of section 203 of the Marine and Coastal Access Act 2009 by section 160) is read as the Town and Country Planning (Scotland ) Act 1997.

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255. It also modifies section 7 of the Sea Fisheries (Shellfish) Act 1967 to substitute the maximum fine that a person may be liable to in respect of an offence under section 4 of that Act is £50,000.