



Aquaculture and Fisheries (Scotland) Act 2013

2013 asp 7

PART 1

AQUACULTURE

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—
- (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,

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- (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.
- (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.

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.

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- (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.
- (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.
- (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—
 - (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,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—

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- (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.
- (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).