

AQUACULTURE AND FISHERIES (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Part 5: Miscellaneous

Section 34 – Unauthorised introduction of fish into certain marine waters

74. Section 34 inserts new section 2C into the 1937 Act. Section 2C(1) enables the Scottish Ministers, by order made by statutory instrument, to specify parts of marine waters adjacent to Scotland (which term has the same meaning as in new section 2ZB(6) of the 1937 Act, inserted by section 14 of the Act) as they consider appropriate. Section 2C(2) obliges the Scottish Ministers to consult such persons as they consider appropriate before making an order under subsection (1). Section 2C(4) makes it an offence to introduce into such a “specified area” any fish of a specified species which originates from outside that area and which has been in salt water in any area of UK waters designated by the Scottish Ministers, unless that introduction has the prior written consent of the Scottish Ministers. Section 2C(5) gives the Scottish Ministers power to make regulations in relation to the manner of applying for this consent, it being intended that applications should be accompanied by a risk assessment similar to that which is presently required under the industry’s own code of practice.

Section 35 – Unauthorised introduction of fish into inland waters

75. This section repeals section 24 of the 2003 Act (which prohibited the introduction of salmon into inland waters without appropriate consent) and introduces a new section 33A into the 2003 Act. Subsection (1) of inserted section 33A creates an offence of intentionally introducing any live fish or live spawn of fish into inland waters, and subsection (2) an offence of possession of live fish or live spawn of fish with the intention of introducing it into inland waters. The offences do not apply to introduction into the waters of a fish farm (subsection (3)(a)) or where the Scottish Ministers or, in the case of salmon, the relevant District Salmon Fishery Board have consented in writing. An offence under subsection (1) or (2) is punishable on summary conviction by a fine not exceeding level 3 on the standard scale (presently equivalent to £1000).

Section 36 – Payments in respect of fish destroyed

76. This section enables the Scottish Ministers to make payments in accordance with a scheme made by them by order in respect of any fish or shellfish destroyed in pursuance of the exercise of such of the Scottish Ministers’ disease control powers as may be specified in the order (for instance, the power to require the clearance of fish farms in terms of section 5C(1) of the 1937 Act, as introduced by section 16 of the Act). Subsection (2) gives the Scottish Ministers power in particular to include in an order provision regulating applications for payment, method of payment, the amounts payable and the basis upon which such amounts are to be ascertained, and conditions upon which payments will depend. Any order under section 36(1) will require to be laid in draft

before the Scottish Parliament, and approved by a resolution of the Parliament before it can be made and come into effect (see section 43(3)(a)).

Section 37 – Payments for certain purposes

77. This section enables the Scottish Ministers to make funds available for the purposes of developing, promoting, organising or researching aquaculture, sea fisheries, the sea fish industry, salmon fisheries and freshwater fisheries.

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

78. Subsection (1) enables the Scottish Ministers to make an order for the purpose of obtaining information in relation to the economic, social and environmental aspects of fish farming and shellfish farming. The power to make orders under subsection (1) must be exercised by statutory instrument which is subject to annulment in pursuance of a resolution of the Scottish Parliament, by virtue of section 43 (Orders) of the Act.
79. Subsection (2) provides that orders under subsection (1) may require any person carrying on a business of fish farming or shellfish farming to provide such information as may be specified in the order; to compile such records as may be specified in the order; and to retain such records for such period as is specified in the order, subject to a three year maximum. Subsection (3) provides that an inspector may require the production of any record which a person is required to retain by virtue of an order under subsection (1), and may inspect or take copies of any such records (subsection (7) provides that “fish farming”, “inspector” and “shellfish farming” have the same meanings as in Part 1; so by virtue of section 12 (Interpretation: Part 1), an inspector is a person authorised by the Scottish Ministers to act as an inspector under the Act, whether generally or for a particular purpose.)
80. Subsection (5) makes it an offence to fail without reasonable excuse to comply with a requirement of an order under section 38, or to provide false information or falsify a record. Such offences are punishable on summary conviction by a fine not exceeding level 4 on the standard scale (presently equivalent to £2,500).