

AQUACULTURE AND FISHERIES (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

3. The Act is in 6 parts. **Part 1** provides a series of information gathering, inspection and enforcement measures aimed at controlling parasites on fish farms and shellfish farms and at improving, in respect of fish farms only, the containment of, prevention of escape of, and recovery of escaped, fish. It also provides a power for the Scottish Ministers to approve a code of practice giving guidance and promoting desirable practices in respect of (a) the prevention, control and reduction of parasites on fish farms and shellfish farms and (b) in respect of fish farms only, the containment of, prevention of escape of, and recovery of escaped, fish.
4. **Part 2** provides powers for the containment and treatment of the disease causing parasite of salmon *Gyrodactylus salaris*, should it be introduced into Scotland. These include powers to create barriers to the movement of fish, to purchase land compulsorily for the purpose of doing so; to maintain, remove and dismantle any such barriers; and to treat waterways with chemical agents.
5. **Part 3** provides a series of measures in respect of salmon and freshwater fisheries.
6. **Part 4** brings in a system of administrative penalties for certain sea fisheries offences, amends the Sea Fisheries (Shellfish) Act 1967 to change the provisions for regulating a fishery and makes an amendment to section 30(1) of the Fisheries Act 1981.
7. **Part 5** provides a series of miscellaneous measures: the regulation of the movement of live fish with a view to preventing the spread of fish diseases; a discretionary power for the Scottish Ministers to make payments in certain circumstances; and the provision of certain information about fish farming and shellfish farming.
8. **Part 6** makes provision in respect of the application of the Act to the Crown; concerning offences by bodies corporate; in respect of minor and consequential amendments; for the making of ancillary provisions by order; for the exercise of powers conferred by the Act by statutory instrument; in respect of interpretation of the Act; and for commencement of provisions of the Act.
9. The schedule to the Act contains minor and consequential amendments to other enactments.

Part 1: Fish Farms and Shellfish Farms

Information

Section 1 – Information about fish farms and shellfish farms

10. Subsection (1) of section 1 enables the Scottish Ministers to make an order for the purpose of obtaining information in relation to the prevention, control and reduction

of parasites on fish farms and on shellfish farms. Subsection (3) enables the Scottish Ministers to make an order for the purpose of obtaining information, in respect of fish farms only, in relation to the containment of fish, prevention of escape of fish, and recovery of escaped fish. The power to make orders under subsections (1) and (3) of section 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).

11. Subsections (2) and (4) of section 1 provide that orders under subsections (1) and (3) may require any person carrying on a business to which the order applies 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 (5) of section 1 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) or (3), and may inspect or take copies of any such records. 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. Section 11(1) (Offences: general) makes it an offence to fail to comply with a requirement imposed by an inspector under subsection (5) of section 1.

Section 2 – Information: offences

12. Section 2 provides that it is an offence for a person to fail to comply, without reasonable excuse, with a requirement of an order made under subsections (1) or (3) of section 1; to knowingly provide information, or to compile a record, which is false in a material particular; or to knowingly alter a record so that it becomes false in a material particular. A person found guilty of committing any of these offences is liable to a fine not exceeding level 4 on the standard scale. This currently equates to a maximum fine of £2,500.

Parasites

Section 3 – Inspections: parasites

13. Section 3 provides for an inspector to carry out inspections of fish farms and shellfish farms for the purposes of ascertaining the levels (if any) of parasites and assessing the measures in place for the prevention, control and reduction of parasites. 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. Subsection (3) of section 3 provides that such inspections may include the taking of samples (including samples of or from fish and shellfish), the examination of documents or records, and the taking of copies of such documents or records. Subsection (4) of section 3 permits inspectors to arrange the carrying out of tests on samples taken during an inspection carried out under subsection (1). The tests that may be carried out are those which the inspector considers necessary for the purpose of ascertaining the levels (if any) of parasites and assessing the measures in place for the prevention, control and reduction of parasites.

Section 4 – Meaning of parasite in Part 1

14. Subsection (1) of section 4 defines “parasite” for the purposes of Part 1 of the Act as meaning *Caligus elongatus* and *Lepeophtheirus salmonis*, two species of sea lice that affect salmon on farms and in the wild. Subsection (2) enables the Scottish Ministers to modify the meaning of the term “parasite” in subsection (1) for the purposes of Part 1 by making an order. This would allow the provisions of Part 1 in respect of parasites to be exercised in respect of such other species of parasite as an order specifies are to be included within the meaning of the term “parasite”. The power to make such an order under subsection (2) of section 4 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).

Containment and escape: fish

Section 5 – Inspections: containment and escape of fish

15. Subsections (1) and (2) of section 5 provide for an inspector to carry out inspections of fish farms only, for the purposes of ascertaining the risk of escape of fish, and whether fish have escaped, from the fish farm. Such inspections may also be carried out for the purpose of assessing the measures in place for the containment of fish on the fish farm (for example the condition of equipment, such as netting or cages), the measures in place for preventing the escape of fish from the fish farm (for example the regime in place for maintaining equipment, working practices, and the appropriate provision of staff training), and the measures in place for the recovery of any fish which may escape from the fish farm (for example, the availability of suitable nets on the fish farm). Subsection (3) of section 5 provides that inspections under subsection (1) may include the taking of samples (including samples of equipment), the examination of documents or records, and the taking of copies of such documents or records. Subsection (4) of section 5 permits inspectors to arrange the carrying out of tests on samples taken during an inspection carried out under subsection (1). The tests that may be carried out are those which the inspector considers necessary for the purpose of ascertaining the risk of escape of fish from the fish farm; ascertaining whether fish have escaped from the fish farm; and assessing the measures in place for the containment of fish on the fish farm, the measures in place for preventing the escape of fish from the fish farm, and the measures in place for the recovery of any fish which may escape from the fish farm.

Enforcement

Section 6 – Enforcement notices

16. Subsections (1) and (2) of section 6 provide that the Scottish Ministers may serve an enforcement notice on a person carrying on a business of fish farming in cases where they are satisfied that that person does not have in place satisfactory measures for the purposes of the prevention, control and reduction of parasites or the containment of fish, prevention of escape of fish, or recovery of escaped fish. Subsection (4) provides that such an enforcement notice may require the person on whom the enforcement notice is served to execute such works and take such other steps as Ministers consider necessary for the purposes of the prevention, control and reduction of parasites or the containment of fish, prevention of escape of fish, or recovery of escaped fish.
17. Subsection (3) provides that the Scottish Ministers may serve an enforcement notice on a person carrying on a business of shellfish farming in cases where they are satisfied that that person does not have in place satisfactory measures for the purpose of the prevention, control and reduction of parasites in respect of the shellfish farm. Subsection (5) provides that such an enforcement notice may require the person on whom the enforcement notice is served to execute such works and take such other steps as Ministers consider necessary for the purpose of the prevention, control and reduction of parasites.
18. Subsection (6) requires that an enforcement notice, whether served under subsection (1) or subsection (3), must specify the date by which the requirements specified in the enforcement notice must be fulfilled. Subsection (7) provides that a person on whom an enforcement notice has been served may appeal to the sheriff against the notice, by summary application made before the end of a 7 day period beginning with the day on which the notice is served. Subsection (8) provides that the sheriff may decide any appeal as the sheriff sees fit, and that the decision of the sheriff in the appeal is final. Subsection (9) provides that a person who contravenes an enforcement notice without reasonable excuse is guilty of an offence. Subsection (10) provides that a person who

is found guilty of committing such an offence is liable to a fine not exceeding level 4 on the standard scale. This currently equates to a maximum fine of £2,500.

19. Subsection (11) provides that where the Scottish Ministers are satisfied that an enforcement notice is contravened in respect of the prevention, control and reduction of parasites they may authorise an inspector to take any action that Ministers consider necessary to fulfil the requirements of the enforcement notice. Subsection (12) provides for the recovery of expenses reasonably incurred by an inspector in taking action authorised by the Scottish Ministers to fulfil the requirements of the enforcement notice.
20. Subsection (13) permits the serving of an enforcement notice to be publicised as widely, in such manner and in such form as the Scottish Ministers think fit.

Code of practice

Section 7 – Code of practice

21. Section 7 enables the Scottish Ministers to approve, by order, all or part of a code of practice (whether issued by them or by any other person) for the purposes of giving guidance and promoting desirable practices in respect of (a) the prevention, control and reduction of parasites on fish farms and shellfish farms and (b) in respect of fish farms only, the containment of fish, prevention of escape of fish, and recovery of escaped fish. Subsection (3) enables the Scottish Ministers, by order, to modify an approved code or to withdraw approval of an approved code or an approved modification of such a code
22. The term “approved code” is defined in section 12 (Interpretation: Part 1) for the purposes of Part 1 of the Act as meaning a code of practice approved under section 7, including any part or modification of an approved code of practice. The power to make orders under subsections (1) and (3) of section 7 approving a code, or modifying a code, or withdrawing approval of an approved code or an approved modification of such a code 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). Subsection (4) of section 7 requires the Scottish Ministers to consult such persons as they consider appropriate before making such an order.

Section 8 – Monitoring and enforcement: code of practice

23. Subsection (1) of section 8 imposes an obligation upon the Scottish Ministers to monitor compliance with any code approved by them under section 7.
24. Subsections (2) and (3) of section 8 provide that the Scottish Ministers may serve a notice on a person carrying on a business of fish farming or shellfish farming where they are satisfied that that person is not complying, or is not likely to comply, with a code approved under section 7 (Code of practice) in a material regard. Such a notice may require the person on whom the notice is served to execute such works and take such other steps as Ministers consider necessary for securing compliance with the approved code in any particular respect (subsection (4)).
25. Subsection (5) of section 8 applies the provisions of subsections (6) to (13) of section 6 (Enforcement notices) to a notice served under subsections (2) and (3) of section 8 in the same way as they apply to enforcement notices served under section 6. Accordingly, notices served under subsections (2) and (3) of section 8 must specify the date by which the requirements specified in them must be fulfilled (section 6(6), as applied); there is a right of appeal against a notice by summary application to the sheriff (section 6(7) and (8), as applied); a person who contravenes a notice served under subsection (2) or (3) of section 8 is guilty of an offence (section 6(9), as applied); a person who is found guilty of committing such an offence is liable to a fine not exceeding level 4 on the standard scale, which currently equates to a maximum fine of £2,500 (section 6(10), as applied); where the Scottish Ministers are satisfied that a notice served under subsection (2) or (3) of section 8 is contravened in respect of the prevention, control and reduction of parasites

they may authorise an inspector to take any action that Ministers consider necessary to fulfil the requirements of the notice (section 6(11), as applied); expenses reasonably incurred by an inspector in taking action authorised by the Scottish Ministers to fulfil the requirements of such a notice may be recovered by the Scottish Ministers from the person upon whom the notice was served (section 6(12), as applied); the serving of a notice under subsection (2) or (3) of section 8 may be publicised as widely, in such manner and in such form as the Scottish Ministers think fit (section 6(13), as applied).

Powers of inspectors and offences

Section 9 – Powers of inspectors: entry

26. Subsection (1) of section 9 provides that an inspector may enter any fish farm or shellfish farm for the purpose of ascertaining whether any power conferred on the inspector under Part 1 of the Act should be exercised and for the purpose of the inspector doing anything in pursuance of the exercise of that power. Subsection (2) requires an inspector entering a fish farm or shellfish farm under the power of entry bestowed by subsection (1) to produce evidence of the inspector's authority to act as an inspector, namely the authorisation to act as an inspector given by the Scottish Ministers (see the definition of the term "inspector" given in section 12 (Interpretation: Part 1) for the purposes of Part 1). Subsection (3) requires that any power of entry conferred on an inspector by or under Part 1 of the Act must be exercised at a reasonable hour, unless the inspector considers the case is an urgent one.

Section 10 – Entry: supplementary

27. Subsection (1) of section 10 applies section 10 to any inspector exercising any power of entry conferred on that inspector by or under Part 1 of the Act. Subsection (2) provides that such an inspector may take with that inspector any other persons and any equipment and vehicles which the inspector considers necessary. Subsections (3) and (4) provide that an inspector may require reasonable assistance to be provided to the inspector by the person who carries on the business of fish farming or shellfish farming; by any other person appearing to the inspector to be under the direction or control of the person who carries on the business of fish farming or shellfish farming; and by any other person who appears to that inspector to be concerned with the operation of the fish farm or shellfish farm. Section 11(1) (Offences: general) makes it an offence to fail to comply with a requirement imposed by an inspector under subsection (3) of section 10.

Section 11 – Offences: general

28. Subsection (1) of section 11 provides that it is an offence for a person to fail, without reasonable excuse, to comply with a requirement imposed by an inspector by virtue of Part 1 of the Act or to obstruct an inspector in the exercise of the inspector's powers under that Part. Accordingly, this is the provision which makes it an offence for a person to fail to comply with a requirement imposed by an inspector under section 1(5) (Information about fish farms and shellfish farms) and section 10(3) (Entry: supplementary).

Interpretation of Part 1

Section 12 – Interpretation: Part 1

29. This section provides definitions for certain terms used in Part 1 of the Act.

Part 2: *Gyrodactylus Salaris*: Containment and Treatment

30. This Part of the Act makes provision in relation to the containment and treatment of *Gyrodactylus salaris* should this parasite of salmon be introduced into Scotland.

Order under section 2 of the 1937 Act: additional powers

Section 13 – Order under section 2 of the 1937 Act: additional powers

31. Section 13 inserts section 2ZA into the 1937 Act. Section 2 (Power to designate areas) of the 1937 Act enables Ministers, where they have reasonable grounds for suspecting that certain waters are or may become “infected waters” (as that term is defined in section 10 (Interpretation) of the 1937 Act) to make an order designating those waters and such adjacent land as Ministers consider appropriate. Such an area is known in section 2 of the 1937 Act as a “designated area”. Under section 2 of the 1937 Act, in respect of a designated area Ministers may prohibit or regulate the taking into or out of the designated area of live fish and live fish eggs and foodstuff of fish and regulate movement of those things within the designated area. New section 2ZA provides additional powers where Ministers designate an area under section 2 of the 1937 Act where they suspect that the waters are or may become infected waters by reason of the presence of the parasite *Gyrodactylus salaris*.
32. These additional powers include prohibiting the taking into or out of the designated area by any person, other than an inspector or other person exercising functions by arrangement with the Scottish Ministers in relation to the 1937 Act, of any vehicle, or description of vehicle, and such equipment, material or substance not falling within section 2(2)(a) of the 1937 Act (i.e. live fish, live eggs of fish and foodstuff of fish) as may be specified in the order designating the area, unless the vehicle, equipment, material or substance concerned is subjected to a specified process of disinfection immediately before being taken in to or, as the case may be, out of the designated area (new section 2ZA(a)). These additional powers also include prohibiting or regulating the taking into or out of the designated area of dead fish (section 2ZA(b)) and regulating entry to and exit from the designated area (section 2ZA(c)).

Preliminary designation of area by order

Section 14 – Preliminary designation of area by order

33. Section 2 of the 1937 Act permits an order to be made only in relation to waters which the Scottish Ministers have reasonable grounds for suspecting are, or may become, infected waters. Section 14 inserts section 2ZB into the 1937 Act immediately after section 2ZA (inserted by section 13 of the Act). Section 2ZB(1) provides that if at any time the Scottish Ministers have reasonable grounds for suspecting that any of the inland waters of, or marine waters adjacent to, the United Kingdom (the terms “inland waters” and “marine water adjacent to the United Kingdom” are defined for the purposes of section 2ZB(1) in section 2ZB(6)) are “infected waters” (as that term is defined in section 10 of the 1937 Act) by reason of the presence of the parasite *Gyrodactylus salaris*, they may by order made by statutory instrument designate such part, or all, of the inland waters of Scotland and the marine waters adjacent to Scotland (as defined by section 2ZB(6)) as they consider appropriate. The power is triggered where the Scottish Ministers have reasonable grounds for suspecting that any of the marine or inland waters of the United Kingdom are “infected waters” by reason of the presence of the parasite *Gyrodactylus salaris*, and does not require that they have grounds to believe that the particular Scottish waters to be designated are at specific risk of infection. The purpose of a designation under section 2ZB(1) is to impose temporary measures to limit the spread of infection while the scale of any outbreak, and thus the need for designations under section 2 of the 1937 Act, can be assessed. So, were the Scottish Ministers to learn of a suspected outbreak of *Gyrodactylus salaris* in waters in England, for example, they would be able to use section 2ZB(1) to impose restrictions upon Scottish waters while the scale of the outbreak was investigated.
34. Section 2ZB(2) provides that an order under section 2ZB(1) designating an area may also prohibit or regulate the taking into or out of the area designated such live fish, live fish eggs and foodstuff of fish (or such description of those things) as may be specified

in the order and regulate the movement within the area designated of such of those things (or description of things) as may be specified in the order until the expiry of the period of thirty days from the day the order was made.

35. Section 2ZB(3) provides for the making of a further order, before the expiry of the thirty day period relating to an order under section 2ZB(1), extending the effect of the first order for a further period of thirty days from the day upon which it would otherwise have ceased to have effect.
36. Section 2ZB(4) provides that such orders, whether made under section 2ZB(1) or (3) are to be made by statutory instrument which is to be laid before the Scottish Parliament.
37. Section 2ZB(5) makes it an offence for any person to intentionally contravene any provision of an order made under either section 2ZB(1) or (3).

Containment and treatment: additional powers

Section 15 – Creation of barriers to movement of fish, treatment of waters with chemical agents etc.

38. Section 15 inserts two new sections into the 1937 Act, conferring additional powers for the containment and eradication of the parasite *Gyrodactylus salaris*.
39. Inserted section 5A of the 1937 Act makes provision for the creation of barriers to the movement of fish. Subsection (1) of section 5A provides that the Scottish Ministers may arrange for the creation of barriers to the movement of fish in any inland waters (as defined in section 2ZB(6) of that Act) for the purposes of preventing the spread of the parasite *Gyrodactylus salaris* or of facilitating treatment with chemical agents with a view to eradicating the parasite from the waters concerned. The term ‘creation of barriers’ includes the closure or alteration of any means for the passage of salmon through, round or over dams, lades or water wheels. A barrier can prevent the spread of the parasite into waters lying upstream of the barrier by preventing the upstream migration of fish of species which might act as hosts for the parasite. In the case of chemical treatment (authorised by section 5B of the 1937 Act, which is also inserted by this section of the Act), the creation of a barrier would enable chemical treatment to be administered to a restricted part of a watercourse rather than having to be applied to the whole watercourse, the area downstream of a barrier being treated with chemical agents.
40. Subsection (2) of inserted section 5A of the 1937 Act provides that the power to arrange for the creation of barriers shall include power to maintain, dismantle and remove the barriers, and subsection (3) provides that the Scottish Ministers may purchase land compulsorily for the purpose of enabling them to create barriers. Compulsory purchase would follow the standard procedure set out in Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947. Paragraph 2 of the schedule to the Act amends section 1(1) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to provide for the application of schedule 1 of that Act to acquisitions under section 5A(3) of the 1937 Act.
41. Inserted section 5B of the 1937 Act provides for the Scottish Ministers to arrange for the treatment with chemical agents of any waters which have been designated by an order under section 2 of that Act (Power to designate areas) in relation to *Gyrodactylus salaris* with a view to eradicating the parasite. The power would be exercised only after consultation aimed at those who might be affected by the chemical treatment of the waters concerned, and after having obtained all necessary statutory permissions (for instance under the Water Environment (Controlled Activities) (Scotland) Regulations 2005).

Section 16 – Clearance of certain fish farms

42. This section inserts two new sections into the 1937 Act, immediately after section 5B (as inserted by section 15 of the Act).
43. Inserted section 5C gives the Scottish Ministers power to serve a notice upon the operator of a fish farm situated in waters which have been designated under section 2 of the 1937 Act in relation to *Gyrodactylus salaris*. Such a notice may impose any of the requirements listed in subsection (3), namely: the withdrawal of all fish from the farm; draining and disinfection of pools and cages; destruction of dead fish, fish showing signs of gyrodactylosis caused by the parasite *Gyrodactylus salaris* and fish showing signs of the presence of the parasite; the cleaning and disinfection or destruction of equipment, material or substances liable to be contaminated with the parasite *Gyrodactylus salaris*; and requiring that the farm not be repopulated with fish until a further notice has been served to this effect. A person who intentionally contravenes any requirement of a notice under section 5C(1) is guilty of an offence, punishable on summary conviction by a fine not exceeding level 4 on the standard scale (the level of penalty is set by section 8(1) of the 1937 Act; level 4 is currently equivalent to £2,500).
44. Inserted section 5D provides that where a person fails to comply with any requirement of a notice under section 5C, an inspector may enter the fish farm to which the notice relates and take such steps as the inspector considers necessary to ensure compliance with the requirement or to remedy the consequences of a failure to comply, and allows for the Scottish Ministers to recover the inspector's reasonable costs from the person upon whom the notice was served.

Section 17 – *Gyrodactylus salaris*: Scottish Ministers' powers to take other measures

45. Section 17 inserts new section 5E into the 1937 Act, immediately after section 5D (inserted by section 16 of the Act). Section 5E(1) gives the Scottish Ministers power to take such other measures as they consider appropriate for the purpose of eradicating *Gyrodactylus salaris* or of preventing or limiting its spread in inland waters in Scotland or in marine waters adjacent to Scotland (which terms have the same meaning as in section 2ZB(6) of the 1937 Act, inserted by section 14 of the Act).

Section 18 – *Gyrodactylus salaris*: Scottish Ministers' power to make payments

46. Section 18 inserts new section 5F into the 1937 Act, immediately after section 5E (as inserted by section 17 of the Act). Section 5F gives the Scottish Ministers power to make payments in consequence of the exercise of their powers under new sections 5A, 5B, 5C or 5E of the 1937 Act, in accordance with schemes made by them by order, and in relation to such matters as may be specified by order. The section would enable schemes to be made for the payment of compensation to those affected by the exercise of certain of the Scottish Ministers' powers in relation to *Gyrodactylus salaris*. Payments in respect of fish which have been destroyed in the exercise of the Scottish Ministers' powers under the new sections referred to above are excluded by subsection (2), as provision for payments in respect of fish destroyed is made in section 29 of the Act. Any orders which the Scottish Ministers propose to make under section 5F(1) will require to be laid before the Scottish Parliament in draft, and approved by a resolution of the Parliament before they can be made and come into force (section 5F(5)).

Part 3: Salmon and Freshwater Fisheries

Salmon and freshwater fisheries

Section 19 – Use of gaff, tailer or landing net

47. Section 1 (Methods of fishing: salmon) of the 2003 Act prohibits fishing for salmon in certain waters except by rod and line and certain other specified means. Section 2

(Methods of fishing: freshwater fish) of the 2003 Act prohibits fishing in inland waters except by rod and line. Section 4 (Meaning of “rod and line”) of the 2003 Act provides the definition for the term “rod and line”. Section 3 (Use of gaff, tailer or landing net) of the 2003 Act provides that nothing in section 1 or 2 of the 2003 Act shall be construed as prohibiting the use of a gaff, tailer or landing net as auxiliary to the taking of fish by rod and line. Accordingly, the use of any instrument as auxiliary to the taking of fish by rod and line is prohibited by sections 1 and 2 of the 2003 Act, except, by virtue of section 3 of the 2003 Act, for the use of a gaff, tailer or landing net

48. Section 20 of the Act amends section 3 of the 2003 Act by removing references to gaff and tailer and substituting a reference to “knotless non-metallic”. Section 3 of the 2003 Act, as amended by section 20 of the Act, provides that nothing in sections 1 or 2 of the 2003 Act shall be construed as prohibiting the use of a knotless non-metallic landing net as auxiliary to the taking of fish by rod and line. Accordingly, this amendment makes knotless non-metallic landing nets the only instrument that is not prohibited as auxiliary to the taking of fish by rod and line. The amendment of section 3 of the 2003 Act prohibits the use of a gaff or a tailer as auxiliary to the taking of fish by rod and line. This section, the effect of which is to prohibit the use of certain products, has been notified to the European Commission in accordance with Directive 98/34/EC, as amended by Directive 98/48/EC (“the Technical Standards Directive”).

Section 20 – Rod and line

49. Section 20 inserts section 3A into the 2003 Act. Section 3A(1) provides that a person shall be treated as fishing by rod and line for the purposes of the 2003 Act in the circumstances set out in section 3A(2), (3) and (4).
50. Section 3A(2) provides that a person is treated as fishing by rod and line for the purposes of the 2003 Act where that person is fishing for or taking salmonids (defined in section 3A(5)) and is not doing so from a boat, subject to the condition that the person is using a single rod and line which is being held by that person.
51. Section 3A(3) provides that a person is treated as fishing by rod and line for the purposes of the 2003 Act where that person is fishing for or taking freshwater fish other than salmonids (“freshwater fish” is defined in section 69 of the 2003 Act) and is not doing so from a boat, subject to the condition that the person uses no more than four rods and line at any one time.
52. Section 3A(4) provides that a person is treated as fishing by rod and line for the purpose of the 2003 Act where that person is fishing for or taking fish (whether salmonids or not) and is doing so from a boat, subject to the condition that no more than four rods and line are used on the boat at any time.
53. Section 20(2) repeals the word “single” in section 4(1) of the 2003 Act and substitutes the term “foul hooking” for the words “pointing or by striking or dragging fish” where they appear in section 4(1) of the 2003 Act. The term “foul hooking” is defined in section 20(2)(c) (inserted subsection (3)). The effect of these amendments is to make it clear what is meant by foul hooking and that foul hooking is unlawful. Subsection 20(2) (b) amends section 4(2) of the 2003 Act so as to prohibit the use of live vertebrates as bait. Subsection 21(2)(c) (inserted subsection (3)) also provides a definition of “set line” as a fishing line left unattended in water and having attached to it one or more baited hooks. Accordingly, it is prohibited to leave any fishing line with one or more lures or baited hooks in water unattended.

Section 21 – Prohibition against using pike gags and certain keepnets

54. Section 21 inserts section 5A into the 2003 Act. Section 5A(1) makes it an offence for a person to use a pike gag in relation to fishing for or taking fish. The term “pike gag” is defined in section 5A(4). A person found guilty of such an offence is liable to a fine

not exceeding level 3 on the standard scale, which currently equates to a maximum fine of £1,000.

55. Section 5A(2) makes it an offence for a person to use a keep net the mesh of which is either knotted or made of metallic material. A person found guilty of such an offence is liable to a fine not exceeding level 3 on the standard scale, which currently equates to a maximum fine of £1,000.
56. Section 5A(3) provides that a person who attempts to commit, or takes steps preparatory to the commission of an offence, under section 5A(1) or (2) is guilty of an offence. A person found guilty of such an offence is liable to a fine not exceeding level 3 on the standard scale, which currently equates to a maximum fine of £1,000. This section, the effect of which is to prohibit the use of certain products, has been notified to the European Commission in accordance with Directive [98/34/EC](#), as amended by Directive [98/48/EC](#).

Section 22 – Close times for freshwater fish

57. Section 22 inserts sections 17A and 17B into the 2003 Act.
58. Section 17A(1) enables the Scottish Ministers, having consulted such persons as they consider appropriate, to make an order specifying a weekly close time for freshwater fish (defined in section 69(1) of the 2003 Act). The power to make an order under section 17A(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 68 (Orders and regulations) of the 2003 Act. Section 17A(2) permits such an order to make different provision for different species of freshwater fish. Section 17A(6) permits such an order to specify the part or area of Scotland in respect of which it is to have effect.
59. Section 17A(3) prohibits any person from fishing for or taking freshwater fish specified in such an order in relation to the close time specified in that order. Section 17A(4) makes it an offence to contravene such an order. Section 17A(4) provides that a person found guilty of such an offence is liable to a fine not exceeding level 3 on the standard scale, which currently equates to a maximum fine of £1,000. Section 17A(5) provides that a person may be convicted of such an offence on the evidence of one witness.
06. Section 17B(1) enables the Scottish Ministers, having consulted such persons as they consider appropriate, to make an order specifying an annual close time for freshwater fish (defined in section 69(1) of the 2003 Act) other than trout (section 17 of the 2003 Act makes provision in respect of an annual close time for trout). The power to make orders under section 17B(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 68 (Orders and regulations) of the 2003 Act. Section 17B(2) permits such an order to make different provision for different species of freshwater fish. Section 17B(7) permits such an order to specify the part or area of Scotland to which it is to have effect.
61. Section 17B(3) provides that any person who, during an annual close time specified in such an order, in relation to the species of freshwater fish specified in such an order, fishes for or takes such fish in any inland waters (as defined in section 69(1) of the 2003 Act) or is in possession of such fish, is guilty of an offence. Such a person is liable on conviction to a fine not exceeding level 3 on the standard scale, which currently equates to a maximum fine of £1,000. Section 17B(6) provides that a person may be convicted of such an offence on the evidence of one witness. Section 17B(5) provides exceptions to the offence provision.

Section 23 – Exemption from certain offences

62. Section 23(1) amends section 28(2)(a) of the 2003 Act to extend the exemption from certain offences in respect of acts done for scientific and other purposes to offences under inserted sections 17A and 17B.
63. Section 30 (Exemptions in relation to fish farming) of the 2003 Act exempts any act or omission which takes place within, and in the course of the operation of, a fish farm from constituting an offence under certain specified provisions of the 2003 Act. Section 23(2) of the Act amends section 30 of the 2003 Act to exempt such acts and omissions from certain other specified provisions of the 2003 Act: namely, sections 6 (Fishing for salmon without right or permission), 8 (Taking of dead salmon or trout), 17B(3) (b) (Annual close time for freshwater fish other than trout) and 23 (Young salmon and spawning beds).

Section 24 – Freshwater fish conservation regulations

64. Section 24 inserts new section 51A into the 2003 Act, which enables the Scottish Ministers to make regulations for the conservation of freshwater fish. The power conferred upon the Scottish Ministers by new section 51A is similar to that which they already have, by virtue of section 38 of the 2003 Act, to make regulations for the conservation of salmon. Before making any regulations under the section, the Scottish Ministers must have regard to any representations made to them by any person having an interest in fishing for or taking freshwater fish, or in the environment (subsection (3)). Subsection (7) provides for regulations to confer enforcement powers upon constables and water bailiffs, and to make different provision in relation to different stretches of water, different seasons and different cases. Subsection (8) provides that contravention of regulations under inserted section 51A, or failure to comply with a requirement imposed by such regulations, is an offence punishable on summary conviction by a fine not exceeding level 4 on the standard scale (presently £2,500), and subsection (9) provides that a person may be convicted of such an offence on the evidence of one witness. Subsection (10) provides that the procedure set out in paragraphs 9A and 11 to 15 of Schedule 1 to the 2003 Act – which require publicity to be given to any proposal for regulations, and opportunity to be given for representations and the holding of inquiries – shall apply to the making of regulations under section 51A. (Paragraph 9A of Schedule 1 to the 2003 Act is inserted by paragraph 6(5)(b) of the Schedule to the Act).

Part 4: Sea Fisheries

Fixed penalty notices

Section 25 – Issue of fixed penalty notices

65. Section 25 provides warranted British sea-fishery officers with the power to issue a fixed penalty notice to a person whom the officer has reasonable grounds for suspecting to have committed a relevant offence. Subsection (2) defines a relevant offence as an offence under the Sea Fisheries enactments that has been specified by the Scottish Ministers by order made by statutory instrument. Subsection (3) defines “Sea Fisheries enactments” as any enactments for the time being in force relating to sea fish or sea fishing, including any enactment relating to fishing for shellfish, salmon or migratory trout.

Section 26 – Content and form of fixed penalty notice

66. This section provides for the detail that should be contained in a fixed penalty notice. Subsection (1) prescribes the information which must be set out in a fixed penalty notice. Paragraph (a) provides that the notice must give sufficient detail of the circumstances alleged to constitute the offence as is necessary to give reasonable information about the alleged offence; paragraphs (b) and (c) require the notice to

specify the amount of the penalty and the period for paying; paragraph (d) requires the notice to state that if before the period for paying has expired the person makes payment of the fixed penalty, any liability for conviction of the offence is discharged; paragraph (e) requires the notice to state that the payment of the fixed penalty is not a conviction and may not be recorded as such; paragraph (f) requires the notice to state that no proceedings may be commenced unless intimation of an intention not to pay the fixed penalty has been made or the period for paying has expired without payment being made; paragraph (g) requires the notice to specify to whom, where and by what means payment should be made; and paragraph (h) requires the notice to state that if the person does not intend to pay the fixed penalty the person may intimate that intention in writing as provided in section 29(2)(b). Subsection (2) permits the Scottish Ministers to include in a notice such other information as they think fit, and subsection (3) gives the Scottish Ministers power by order to prescribe the form of notices. Subsection (4) defines the period for paying as 28 days, subject to any order made under subsection (5), which permits the Scottish Ministers by order to specify a period shorter than 28 days in relation to different cases and categories of case (which are most likely to be those relating to persons who are domiciled outside the UK).

Section 27 – Amount and payment of fixed penalty

67. Subsection (1) allows for the Scottish Ministers to prescribe a scale of fixed penalties for the purposes of sections 25 to 31, the amount of the maximum penalty on the scale not to exceed a sum of 80% of level 4 on the standard scale. Level 4 currently equates to £2,500, giving a maximum penalty of no more than £2,000. Subsection (2) defines “appropriate fixed penalty” as such fixed penalty on the scale prescribed under subsection (1) as the British sea-fishery officer thinks fit having regard to the circumstances of the case and any relevant provision of an order under that subsection. Subsection (3) provides that the payment must be made to the Scottish Ministers at such address and by such methods as the Scottish Ministers may by order specify.

Section 28 – Effect of payment

68. Section 28 sets out the effect of payment of the appropriate fixed penalty. Subsection (1) provides that when a person makes payment before the period of paying has expired, no proceedings may be brought against the person for the offence. Subsection (2) provides that payment of a fixed penalty is not a conviction and may not be recorded as such.

Section 29 – Intimation of non-payment

69. Section 29 provides that a person can intimate before the expiry date of the fixed penalty that they do not intend to pay. Subsection (2) provides for the method by which a person can intimate that they do not intend to pay, subsection (2)(b) permitting the Scottish Ministers by order to specify the person to whom, and the address to which, such intimation may be sent or delivered.

Section 30 – Restriction on proceedings and notification of procurator fiscal

70. Section 30(1) prevents proceedings in respect of an offence to which a notice relates from being brought against the person to whom the notice relates unless the procurator fiscal has been notified in accordance with subsection (2) or (3). Subsection (2) requires the Scottish Ministers (unless the notice has been withdrawn under section 31) to notify the procurator fiscal if they receive intimation, in terms of section 29(1), that the person to whom the notice was issued does not intend to pay the fixed penalty. Subsection (3) requires the Scottish Ministers (unless the notice has been withdrawn) to notify the procurator fiscal if payment of the fixed penalty has not been made before the expiry of the period for paying and no intimation has been made under section 29(1). Subsection (4) makes provision about the evidential status of a certificate stating that payment of an amount specified in the certificate was or was not received by a specified date,

providing that any such certificate which purports to be signed by or on behalf of the Scottish Ministers is sufficient evidence of the facts stated.

Section 31 – Withdrawal of a fixed penalty notice or expiry of period for paying

71. Section 31(1) allows a British sea-fishery officer to withdraw a fixed penalty notice if the officer determines that the offence to which it relates was not committed or that the notice ought not to have been issued to the person to whom it was issued. Subsection (2) provides that where a notice has been withdrawn, no amount is payable by way of fixed penalty in pursuance of that notice, and any amount which has already been paid must be repaid. Subsection (3) provides that where the period for paying has expired, no amount is payable by way of fixed penalty in pursuance of that notice.

Miscellaneous

Section 32 – Amendment of the Sea Fisheries (Shellfish) Act 1967

72. Section 32(1) amends section 3(3) of the Sea Fisheries (Shellfish) Act 1967 to increase the maximum fine level for an offence under a Regulating Order to £50,000. A Regulating Order is secondary legislation made under the 1967 Act which provides a local management mechanism for agreed shellfish stocks in defined areas whereby a grantee may use a licensing system to manage stocks and effort in the fisheries. Subsection (2) amends section 4(7) of the Sea Fisheries (Shellfish) Act 1967 to provide that the discretionary revocation of a licence by the grantee can happen after the licence holder is convicted of one fisheries offence. Previously, this could only happen after a second offence.

Section 33 – Enforcement of Community obligations

73. This section amends section 30(1) of the Fisheries Act 1981 (Enforcement of Community rules) to apply the provisions of that subsection to enforceable Community obligations (for example, the obligation on certain fishing vessels to have a working satellite tracking device on board) as well as enforceable Community restrictions.

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).

Part 6: General

Section 39 – Crown application

81. This section provides that the Act binds the Crown. Amendments to other Acts have the same application to the Crown as the other provisions of the Acts amended: for example, the Crown application of the 2003 Act is governed by section 67 of that Act. Subsections (2) and (3) provide that nothing in the Act renders the Crown criminally

liable, but that the Court of Session may make a declaration, on the application of the Lord Advocate, of the unlawfulness of any contravention by the Crown of the Act's provisions.

Section 40 – Offences by bodies corporate etc.

82. This section means that where an offence is committed by a body corporate (such as a company), by a Scottish partnership or by an unincorporated association, certain officers of the body corporate, partners or managers of the association may in certain circumstances be held to have committed the offence and are liable to be proceeded against and punished accordingly.

Section 41 – Minor and consequential amendments

83. This section introduces the schedule to the Act, which contains minor and consequential amendments to other enactments.

Section 42 – Ancillary provision

84. This section permits the Scottish Ministers to make by order such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of this Act. It would permit amendments to be made to legislation which required to be amended in consequence of the provisions of the Act, but which had for whatever reason been omitted from the schedule.

Section 43 – Orders

85. This section specifies the Parliamentary process for Statutory Instruments made under this Act.

Schedule – Minor and consequential amendments

86. The schedule contains minor amendments and amendments consequential on the Act.
87. Paragraph 1 of the schedule makes a number of amendments to the 1937 Act, including amendments to the powers of inspectors to allow them to exercise powers of entry for inspecting land for the purposes of the *Gyrodactylus salaris* provisions introduced by Part 2 of the Act, and making it clear that inspectors may be accompanied by such persons as may be required and bring with them such equipment and vehicles as may be required.
88. The effect of the amendment to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 introduced by paragraph 2 of the schedule is to apply the procedure in Schedule 1 to that Act to any compulsory purchase which might be sought under section 5A(3) of the 1937 Act (as inserted by section 15 of the Act).
89. Paragraph 3 repeals subsections (9A) and (9B) of section 4 of the 1967 Act, which required that any fish taken in an area specified by an order under that section as closed to fishing be returned to the sea forthwith, and made it an offence to fail to do so.
90. Paragraph 4 introduces a technical amendment, correcting subsection 5(b) of section 30 of the 1981 Act.
91. Paragraph 5 introduces a technical amendment to take account of the fact that section 32 changes the level of fine available under section 3(3) of the Sea Fisheries (Shellfish) Act 1967 from level 5 to £50,000. The original fine level is consequently repealed.
92. Paragraph 6 introduces a number of amendments to the 2003 Act, including modifications to the procedure relating to protection orders made under section 48 of that Act (sub-paragraphs (4) and (6) to (8)), including provision for such orders to

*These notes relate to the Aquaculture and Fisheries (Scotland)
Act 2007 (asp 12) which received Royal Assent on 5th April 2007*

be varied by a further order made by the Scottish Ministers without the need for an application to be made to them.