Aquaculture and Fisheries (Scotland) Bill

1st Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

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Amendments in debating order

**Duty to publish information on parasites**

Alex Fergusson

1. Before section 1, insert—

   "Duty to publish information about fish farms and shellfish farms"

   After section 1 of the Aquaculture and Fisheries (Scotland) Act 2007 insert—

   "1A Duty to publish information

   A person who carries on a business of fish farming or shellfish farming must—

   (a) within 1 month of compiling it, publish information relating to the number of parasites counted in the course of a weekly count of parasites at the facility, including—

   (i) the date of the count, and

   (ii) the number of parasites counted on the fish sampled per facility and the stages of the life-cycle of the parasites counted, those stages for *Caligus elongates* being mobiles and for *lepeophtheirus salmonis* being non-gravid mobiles and gravid females, and

   (b) ensure that the published information remains accessible to the public for the period of 3 years beginning with the date of publication."

Claudia Beamish

52. In section 1, page 2, line 24, at end insert—

   "(ba) arrangements for the publication, within 1 month of compiling it, of information relating to the number of parasites counted in the course of a weekly count of parasites at the farms within the farm management area, including—

   (i) the number of parasites, presented where appropriate as an average across the farm management area, counted on the fish sampled and the stages of the life-cycle of the parasites counted, those stages for *Caligus elongates* being mobiles and for *lepeophtheirus salmonis* being non-gravid mobiles and gravid females, and

   (ii) the period of 7 days within which the counts were made,

   (bb) arrangements to ensure that information published in accordance with arrangements under paragraph (ba) remains accessible to the public for the period of 3 years beginning with the date of publication."

**Fish farm management agreements and statements**

Tavish Scott

65. In section 1, page 1, line 17, after <of> insert <coastal marine>
In section 1, page 1, leave out <at a fish farm located within a farm management area>

Claudia Beamish

In section 1, page 1, leave out lines 19 to 22 and insert—

<(  ) where there is more than one person who carries on the business of fish farming within the farm management area—

(i) be party to a farm management agreement in relation to the fish farm, and

(ii) ensure that the fish farm is managed and operated in accordance with the agreement,

(  ) where there is only one person who carries on the business of fish farming within the farm management area—

(i) prepare and maintain a farm management statement in relation to the fish farm, and

(ii) ensure that the fish farm is managed and operated in accordance with the statement.>

Paul Wheelhouse

In section 1, page 2, leave out lines 2 and 3

Paul Wheelhouse

In section 1, page 2, leave out lines 13 and 14

Paul Wheelhouse

In section 1, page 2, line 16, leave out <(2)(b)(ii)> and insert <(2)(b)>

Paul Wheelhouse

In section 1, page 2, line 16, leave out <(3)(b)(ii)> and insert <(3)(b)>

Jayne Baxter

In section 1, page 2, line 24, at end insert—

<(  ) minimising impacts on wild fish and wild fish populations,>

Claudia Beamish

In section 1, page 2, line 24, at end insert—

<(  ) communication with persons who, so far as the persons who carry on a business of fish farming within the farm management area can reasonably ascertain, have an interest in the marine environment or the freshwater environment in or in the vicinity of the farm management area, including in particular persons who, or who are representative of those who, have an interest in wild fish or nature conservation,>
**Obtaining samples from fish farms**

**Tavish Scott**  
68 In section 2, page 4, leave out lines 11 and 12

**Tavish Scott**  
69 In section 2, page 4, line 17, leave out from beginning to <farms,> in line 18

**Paul Wheelhouse**  
17 In section 2, page 4, line 18, leave out from <and> to end of line 20

**Prohibition on introduction of genetically modified organisms**

**Rob Gibson**  
11 After section 2, insert—

<Prohibition on introduction of genetically modified organisms>  
(1) The Aquaculture and Fisheries (Scotland) Act 2007 is amended in accordance with this section.

(2) After section 35 (unauthorised introduction of fish into inland waters) insert—

“35A  
Prohibition on introduction of genetically modified organisms  
(1) A person is guilty of an offence who intentionally introduces a genetically modified organism into waters in a farm management area or into inland waters.

(2) 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.

(3) In this section—

“farm management area” has the meaning given in section 4A(5) of this Act,
“genetically modified organism” has the meaning given in Regulation (EC) No. 1830/2003(1) of the European Parliament and of the Council concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC.”.

Fish farms: enforcement notices and revocation of licences

Jayne Baxter

53 After section 2, insert—

<Enforcement notices for the protection of wild fish

(1) The Aquaculture and Fisheries (Scotland) Act 2007 is amended in accordance with this section.

(2) In section 6 (enforcement notices)—

(a) in subsection (2), before paragraph (a) insert—

“(za) the protection of wild salmonids in the vicinity of the fish farm,”,

(b) in subsection (2), in paragraph (a), after “control” insert “, containment”.

Jayne Baxter

54 After section 2, insert—

<Power of the Scottish Ministers to direct SEPA to vary or revoke licences

(1) The Aquaculture and Fisheries (Scotland) Act 2007 is amended in accordance with this section.

(2) After section 6 (enforcement notices) insert—

“6A Power of the Scottish Ministers to direct SEPA to vary or revoke licences

(1) Where the Scottish Ministers—

(a) are satisfied that a person who carries on a business of fish farming does not have satisfactory measures in place for any of the purposes mentioned in subsection (2), and

(b) consider that other enforcement measures available to them are not appropriate in the circumstances of the case,

the Scottish Ministers may direct SEPA to revoke, or vary in such manner as the Scottish Ministers see fit, any licence or authorisation granted or issued by it under any enactment to the person.

(2) The purposes are—

(a) the prevention, control, containment and reduction of parasites,

(b) the containment of fish,

(c) the prevention of escape of fish,

(d) the recovery of escaped fish,

(e) the protection of wild salmonids,
(f) the protection of the marine or freshwater environment.”.

**Technical requirements for equipment used in fish farming**

_Tavish Scott_

70 In section 3, page 4, line 27, leave out `<requirements>` and insert `<standards>`

_Tavish Scott_

71 In section 3, page 4, line 29, leave out `<requirements>` and insert `<standards>`

_Tavish Scott_

72 In section 3, page 4, line 35, leave out `<requirements>` and insert `<standards>`

_Jim Hume_

55 In section 3, page 4, line 36, at end insert—

<(( )) prescribe training requirements for persons who will use such equipment as may be prescribed,>

_Tavish Scott_

73 In section 3, page 5, line 4, leave out `<requirements>` and insert `<standards>`

_Tavish Scott_

74 In section 3, page 5, line 8, leave out `<requirements>` and insert `<standards>`

_Tavish Scott_

75 In section 3, page 5, line 9, leave out `<requirements>` and insert `<standards>`

_Jim Hume_

56 In section 3, page 5, line 10, after `<equipment>` insert `<and training>`

_Tavish Scott_

76 In section 3, page 5, line 23, leave out `<requirements>` and insert `<standards>`

_Paul Wheelhouse_

18 In section 3, page 5, leave out line 29

**Wellboats: definition and enforcement notices**

_Tavish Scott_

77 In section 4, page 6, line 5, leave out from `<contains>` to end of line 19 and insert `<is described as a wellboat in its registration or insurance documentation.>`
Paul Wheelhouse

19 In section 4, page 6, leave out line 16 and insert—

\(<(\text{ ) the grading of farmed fish.}>\)

Paul Wheelhouse

20 In section 4, page 6, line 19, at end insert <, and “grading”, in relation to farmed fish, means separating and sorting the fish according to size.>

Tavish Scott

58 In section 7, page 8, line 36, at end insert—

\(<(\text{ ) Before recovering any expenses under subsection (6), the Scottish Ministers must provide to the person on whom the notice was served a statement of the expenses.}>\)

Appeals and applications: procedure

Paul Wheelhouse

21 In section 6, page 7, line 30, after <appeal> insert <by way of summary application>

Tavish Scott

57 In section 6, page 7, line 32, leave out <7> and insert <14>

Paul Wheelhouse

22 In schedule 1, page 51, line 12, after <appeal> insert <by way of summary application>

Paul Wheelhouse

23 In schedule 1, page 51, line 27, at end insert—

\(<(\text{ ) An appeal on a point of law against the decision of a sheriff under sub-paragraph (1) lies to the Court of Session only.}>\)

Paul Wheelhouse

24 In section 16, page 16, line 4, after <appeal> insert <by way of summary application>

Paul Wheelhouse

37 In section 33, page 33, line 37, at end insert—

\(<(\text{ ) An application under subsection (2) is to be made by way of summary application.}>\)

Paul Wheelhouse

40 In schedule 2, page 53, line 36, at end insert—

\(<(\text{ ) A forfeiture application is to be made by way of summary application.}>\)
Commercially damaging species: surveillance

Tavish Scott

59 In section 10, page 11, line 21, at end insert—

< ( ) An order under section 9(1) which includes provision conferring a power such as is mentioned in subsection (3)(b) must provide for—

(a) the nature of the surveillance activities to be undertaken, and

(b) the duration of those activities,

to be agreed with the person who carries on the business of fish farming or shellfish farming at a fish farm or shellfish farm affected by the activities.>

Marine fish farms: planning

Paul Wheelhouse

25 After section 19, insert—

<CHAPTER 4

PLANNING PERMISSION

Planning permission for marine fish farms

(1) Section 31A of the Town and Country Planning (Scotland) Act 1997 (planning permission in respect of operation of marine fish farm) is amended in accordance with this section.

(2) After subsection (2) insert—

“(2A) Subject to subsection (4), any planning permission may be granted by the Scottish Ministers—

(a) by order, or

(b) on application to them in accordance with regulations under subsection (8).”.

(3) After subsection (4) insert—

“(4A) Subsection (4B) applies where—

(a) an order granting planning permission (whether by virtue of subsection (2A)(a) or subsection (3)) is revoked, and

(b) the date of the revocation is, in relation to any marine fish farm to which the order applied, earlier than the appropriate date (within the meaning of section 26AA(2)) in respect of that fish farm.

(4B) For the purposes of the operation of section 26AA(1)(a)(ii) in relation to any such marine fish farm after revocation of the order, the fact that planning permission had been granted by the order is to be ignored.”.

(4) In subsection (8)—

(a) paragraph (a) is repealed, and
(b) in paragraph (b), for the words “such an application” substitute “an application for planning permission”.

**District salmon fishery boards: governance**

Paul Wheelhouse

26 In section 20, page 19, leave out line 21

Paul Wheelhouse

27 In section 20, page 21, line 18, leave out <such>

Paul Wheelhouse

28 In section 20, page 21, line 19, leave out from <as> to end of line 20

Paul Wheelhouse

29 In section 20, page 21, line 20, at end insert—

   Less than <( )> An order under subsection (1) above may make only such provision as the Scottish Ministers consider necessary for a purpose specified in subsection (2) below.>

**Applications for orders and regulations under the 2003 Act**

Paul Wheelhouse

30 In section 21, page 22, line 26, at end insert—

   Less than <( )> specify in the notice details of—

   (i) where and how such representations or objections (if any are made) may be viewed, and

   (ii) how copies of any such representations or objections that are made may be obtained.>

Paul Wheelhouse

31 In section 21, page 22, line 29, after <specify> insert <in the notice>

Paul Wheelhouse

32 In section 21, page 23, leave out lines 3 to 8

Alex Fergusson

3 In section 21, page 23, line 4, leave out from first <a> to <application> in line 6 and insert <such manner (being reasonably accessible to persons in the district or districts affected by the proposed application) as the applicant sees fit>
THIS IS NOT THE MARSHALLED LIST

Alex Fergusson

4 In section 21, page 23, line 11, leave out from first <a> to <application> in line 12 and insert <such manner (being reasonably accessible to persons in the district or districts affected by the proposed application) as the applicant sees fit>

Paul Wheelhouse

33 In section 21, page 23, line 22, leave out <, (6)>

Alex Fergusson

5 In section 21, page 23, line 35, at end insert—
   <( ) after paragraph 11(2) insert—
   “(2A) The Scottish Ministers may waive the requirement under sub-paragraph (1) above where it appears to them that adequate notice of the proposals has already been given under paragraph 9B.”.>

Technical and procedural

Paul Wheelhouse

34 In section 22, page 25, line 26, at end insert—
   <( ) In section 68 (orders and regulations), in subsection (4), after “under” insert “subsection (1) of section 21A of this Act that make modifications such as are mentioned in subsection (3)(c) of that section, or under”.

Paul Wheelhouse

43 In section 47, page 42, line 35, leave out from <after> to end of line 36 and insert <—
   ( ) the words “each body of water in the district, and” become sub-paragraph (i) of that paragraph, and
   ( ) after that sub-paragraph insert—
   “(ii) each shellfish water protected area in the district, and”.

Paul Wheelhouse

46 In section 52, page 47, line 9, leave out <An> and insert <The following orders and regulations are subject to the affirmative procedure—
   (a) regulations under section 50,
   (b) an>

Paul Wheelhouse

47 In section 52, page 47, line 10, leave out <is subject to the affirmative procedure>

Paul Wheelhouse

48 In section 52, page 47, line 11, leave out <any>
Monitoring and evaluating the effects of orders

Alex Fergusson

6 In section 25, page 27, line 23, at end insert—

   (6AA) Before imposing requirements under subsection (6A), the Scottish Ministers
          must consult—
          (a) each district salmon fishery board that would be affected by the proposed
              requirements,
          (b) all other persons who, so far as the Scottish Ministers can reasonably
              ascertain, have an interest in or may be affected by the proposed
              requirements.

   (6AB) A consultation under subsection (6AA) must include information on the
          potential costs of the proposed requirements, and invite representations on the
          ability of those on whom the requirements may be imposed to meet those
          costs.>

Alex Fergusson

7 In section 25, page 27, line 28, leave out <4> and insert <3>

Paul Wheelhouse

35 In section 25, page 27, line 29, leave out from <and> to end of line 30

Alex Fergusson

8 In section 25, page 27, line 38, at end insert—

   (3AA) Before imposing requirements under subsection (3A), the Scottish Ministers
          must consult—
          (a) each district salmon fishery board and each proprietor of salmon
              fisheries that would be affected by the proposed requirements,
          (b) all other persons who, so far as the Scottish Ministers can reasonably
              ascertain, have an interest in or may be affected by the proposed
              requirements.

   (3AB) A consultation under subsection (3AA) must include information on the
          potential costs of the proposed requirements, and invite representations on the
          ability of those on whom the requirements may be imposed to meet those
          costs.>

Alex Fergusson

9 In section 25, page 28, line 5, leave out <4> and insert <3>

Paul Wheelhouse

36 In section 25, page 28, line 6, leave out from <and> to end of line 7

Alex Fergusson

10 In section 25, page 28, line 19, at end insert—

   ( ) after subsection (6) insert—
“(6A) Before imposing requirements under subsection (6)(ba), the Scottish Ministers must consult—

(a) each district salmon fishery board and each proprietor of salmon fisheries that would be affected by the proposed requirements,

(b) all other persons who, so far as the Scottish Ministers can reasonably ascertain, have an interest in or may be affected by the proposed requirements.

(6B) A consultation under subsection (6A) must include information on the potential costs of the proposed requirements, and invite representations on the ability of those on whom the requirements may be imposed to meet those costs.”

### Offences exempted by permission or consent

**Jim Hume**

60* In section 29, page 30, line 38, at end insert—

<(( ) in subsection (2), after “5(1)(c),” insert “13, 14,”)>.

**Jim Hume**

61 In section 29, page 30, line 41, after <salmon),> insert <—

( ) in subsection (1), for the words from “does” to the end of the subsection substitute “—

(a) does the act for—

(i) some scientific purpose; or

(ii) the purpose of protecting, improving or developing stocks of fish;

(b) has consulted the district salmon fishery board for that district; and

(c) has obtained the previous permission in writing of the Scottish Ministers.”,

( )>

### Regulations on right to buy salmon fisheries

**Claudia Beamish**

62 After section 29, insert—

<Regulations on right to buy salmon fisheries

Regulations on right to buy salmon fisheries

(1) The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 is amended in accordance with this section.

(2) After section 39 insert—

“39A Regulations on right to buy salmon fisheries
In order to secure the results in subsection (2), the Scottish Ministers may by regulations make provision for a scheme to grant to district salmon fishery boards the right to buy salmon fishing rights in any waters in a salmon fishery district other than inland waters.

The results are that—

(a) a district salmon fishery board may register an interest in acquiring salmon fishing rights,

(b) where such an interest in acquiring salmon fishing rights is for the time being registered, the owner of those rights, or a creditor in a standard security with a right to sell the rights, must give notice to the district salmon fishery board of a proposal to sell the rights or any part of them,

(c) the district salmon fishery board has the right to buy the rights to which the proposed sale relates from the owner or, as the case may be, the creditor.

Regulations under subsection (1) may, in particular, make provision for—

(a) classes of salmon fishing rights that are subject to the right to buy,

(b) circumstances in which district salmon fishery boards will have the right to buy such salmon fishing rights,

(c) procedures to be followed by a district salmon fishery board in order to exercise the right,

(d) procedures to be followed by a district salmon fishery board following the purchase of salmon fishing rights.

Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.”

Offences and powers of entry under fisheries legislation

Paul Wheelhouse

After section 43, insert—

<Inshore sea fishing

Contravention of orders prohibiting inshore sea fishing

(1) The Inshore Fishing (Scotland) Act 1984 is amended in accordance with this section.

(2) In section 4 (offences), after subsection (1A) insert—

“(1B) A person commits an offence if—

(a) the person is found in, or in the immediate vicinity of, the area specified in an order under section 1 of this Act;

(b) the person is found there at, or about, a time at which the prohibition under the order applies;

(c) when so found, the person is in possession of such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of fishing in contravention of the order, and
(d) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the person intends to fish in contravention of the order.”.

(3) After section 4 insert—

“4A Contravention of orders under section 1: presumption

(1) Subsection (2) applies in proceedings against a person (“the accused”) for an offence under section 4(1) of this Act involving fishing in contravention of a prohibition contained in an order under section 1 of this Act (other than a prohibition under section 1(2)(d)).

(2) It is to be presumed that the accused was, or had been, fishing in contravention of the order if—

(a) it is proved that—

(i) the accused was found in, or in the immediate vicinity of, the area specified in the order;

(ii) the accused was found there at, or about, a time at which the prohibition under the order applies, and

(iii) when so found, the accused was in possession of any of the things mentioned in subsection (3), and

(b) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the accused was, or had been, fishing in contravention of the order.

(3) The things are—

(a) such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of fishing in contravention of the order;

(b) sea fish the fishing for which is prohibited by the order.

(4) Subsection (2) does not apply if evidence is adduced sufficient to raise an issue as to whether—

(a) the accused’s presence in, or in the vicinity of, the area specified in the order was for the purpose of fishing in contravention of the order, or

(b) where the accused was found in possession—

(i) of any of the things mentioned in paragraph (a) of subsection (3), the possession of the thing was for that purpose;

(ii) of sea fish mentioned in paragraph (b) of that subsection, the fish were caught or taken in contravention of the order.”.

Paul Wheelhouse

39 After section 43, insert—

<Powers of entry

(1) The Inshore Fishing (Scotland) Act 1984 is amended as follows.

(2) After section 6 insert—
“6A  Power to enter land

(1) The powers conferred by this section are exercisable by British sea-fisheries officers in relation to any land for the purposes of enforcing the provisions of any order under section 1 of this Act and the provisions of section 3 of this Act.

(2) Any such officer may at any time enter any land (including the foreshore) other than a dwelling house, on foot or in a vehicle, with or without persons assigned to the officer in the officer’s duties, and for that purpose may—

(a) open lockfast places;
(b) remove any objects preventing the officer from gaining access to the land;
(c) require any person who has placed an object in such a position as to prevent the officer from gaining access to the land to remove the object;
(d) require the owner or occupier of the land to allow the officer access to the land.

(3) Any officer who proposes to exercise the power of entry conferred by subsection (2) above must, if so requested, produce evidence of the officer’s identity.

(4) A person commits an offence if the person—

(a) wilfully obstructs a British sea-fishery officer exercising a right of entry under subsection (2) above;
(b) refuses or fails to comply with a requirement imposed by such an officer under paragraph (c) or (d) of that subsection.

(5) It is a defence for a person charged with an offence under subsection (4)(b) above 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.

(6) A constable may arrest without warrant any person who the constable reasonably believes is committing or has committed an offence under subsection (4) above.

(7) Subsection (6) above is without prejudice to any power of arrest conferred by law apart from that subsection.

(8) A person who commits an offence under subsection (4) above is liable—

(a) on summary conviction to a fine not exceeding the statutory maximum;
(b) on conviction on indictment to a fine.

(9) A British sea-fishery officer is not liable in any civil or criminal proceedings for anything done in purported exercise of the powers conferred on the officer by this section, if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.”.

(3) After section 10 insert—

“10A  Crown application: Scotland

(1) Section 6A binds the Crown and applies in relation to Crown land as it applies in relation to other land.
(2) Nothing in that section is to be taken as in any way affecting Her Majesty in Her private capacity.

(3) No contravention by the Crown of that section makes the Crown criminally liable.

(4) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(5) For the purposes of subsection (1), “Crown land” means land an interest in which—

(a) belongs to Her Majesty in right of the Crown,
(b) belongs to an office-holder in the Scottish Administration or a government department or is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department.

(6) In subsection (5), “an office-holder in the Scottish Administration” is to be construed in accordance with section 126(7)(a) of the Scotland Act 1998.”.>

Paul Wheelhouse

41 In section 44, page 40, line 25, at end insert—

<\(ab\) if any person in Scotland—

(i) fishes in contravention of any such restriction; or
(ii) fails to comply with any such obligation,

the person is guilty of an offence;”.

Paul Wheelhouse

42 In section 44, page 40, line 26, leave out <or (aa)> and insert <, (aa) or (ab)>

Paul Wheelhouse

44 After section 48, insert—

<Contravention of regulated fishery orders

(1) The Sea Fisheries (Shellfish) Act 1967 is amended in accordance with this section.

(2) In section 3 (effect of grant of right of regulating a fishery)—

(a) after subsection (4) insert—

“(4A) Subsection (4B) applies where an order under section 1 of this Act—

(a) confers a right of regulating a fishery for any specified description of shellfish, and

(b) imposes restrictions on, or makes regulations respecting, the dredging, fishing for and taking of any specified description of shellfish within the limits of the regulated fishery or any part of it.

(4B) A person commits an offence if—

(a) the person is found within the limits of, or in the immediate vicinity of, the regulated fishery,
(b) the person is found there at, or about, a time at which the restrictions imposed or regulations made by the order apply,

(c) when so found, the person is in possession of such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of dredging, fishing for and taking shellfish in contravention of the restrictions or regulations, and

(d) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the person intends to dredge, fish for and take shellfish in contravention of the restrictions or regulations.

(4C) A person who commits an offence under subsection (4B) is liable on summary conviction to a fine not exceeding £50,000.

(b) in subsection (5), after “subsection (3)” insert “or (4B)”, and

(c) in subsection (6), for “Subsection (1) of this section” substitute “This section”.

(3) After section 3 insert—

“3A Contravention of regulated fishery orders: presumption

(1) Subsection (2) applies in proceedings against a person (“the accused”) for an offence under section 3(3) of this Act involving dredging, fishing for and taking shellfish in contravention of restrictions imposed or regulations made by—

(a) an order under section 1 of this Act, or

(b) the grantee of such an order.

(2) It is to be presumed that the accused was, or had been, dredging, fishing for and taking shellfish in contravention of the restrictions or regulations if—

(a) it is proved that—

(i) the accused was found within the limits of, or in the immediate vicinity of, the regulated fishery to which the order relates,

(ii) the accused was found there at, or about, a time at which the restrictions or regulations apply, and

(iii) when so found, the accused was in possession of any of the things mentioned in subsection (3), and

(b) it is reasonable to infer from those facts (either by themselves or taken together with other circumstances) that the accused was, or had been, dredging, fishing for and taking shellfish in contravention of the restrictions or regulations.

(3) The things are—

(a) such equipment, vehicle, apparatus or other gear or paraphernalia (including clothing) as may be used for the purpose of dredging, fishing for and taking shellfish in contravention of the order,

(b) shellfish the dredging, fishing for and taking of which is prohibited by the restrictions or regulations.

(4) Subsection (2) does not apply if evidence is adduced sufficient to raise an issue as to whether—
(a) the accused’s presence within the limits of, or in the vicinity of, the regulated fishery to which the order relates was for the purpose of dredging, fishing for and taking shellfish in contravention of the restrictions or requirements, or

(b) where the accused was found in possession—
   (i) of any of the things mentioned in paragraph (a) of subsection (3), the possession of the thing was for that purpose,
   (ii) of shellfish mentioned in paragraph (b) of that subsection, the shellfish were caught or taken in contravention of the restrictions or requirements.”.

Paul Wheelhouse

45 After section 48, insert—

<Enforcement of orders: powers of entry

(1) The Sea Fisheries (Shellfish) Act 1967 is amended in accordance with this section.

(2) After section 4C insert—

“4CA Power to enter land

(1) For the purposes of exercising the powers conferred by sections 4A to 4C, and of enforcing the restrictions imposed by, or regulations made by, an order under section 1 conferring a right of regulating a fishery, a British sea-fishery officer may at any time enter land (including the foreshore) other than a dwelling house, and for that purpose may—
   (a) open lockfast places,
   (b) remove any objects preventing the officer from gaining access to the land,
   (c) require any person who has placed an object in such a position as to prevent the officer from gaining access to the land to remove the object,
   (d) require the owner or occupier of the land to allow the officer access to the land.

(2) A British sea-fishery officer may—
   (a) exercise the power of entry under subsection (1) on foot or in a vehicle,
   (b) when exercising that power, take with the officer—
      (i) such persons as appear to the officer to be necessary,
      (ii) any equipment or material.

(3) The power of entry under subsection (1)—
   (a) may not be exercised in relation to land in respect of which section 4B confers a power of entry, and
   (b) is without prejudice to the power of entry conferred by that section.

(4) A British sea-fishery officer who proposes to exercise the power of entry conferred by subsection (1) must, if so required, produce evidence of the officer’s identity.”.

(3) In section 4D—
(a) in subsection (1)—
   (i) for the words “or 4B(3) or (12)” substitute “, 4B(3) or (12) or 4CA(2)(b),”
   (ii) for the words “or 4C” substitute “, 4C or 4CA”,
(b) in subsection (2)(a), for the words “or 4B” substitute “, 4B or 4CA”,
(c) after subsection (2) insert—
   “(2A) A constable may arrest without warrant any person who the constable reasonably believes is committing or has committed an offence under subsection (2) relating to—
   (a) a failure to comply with a requirement imposed under a power conferred by section 4CA,
   (b) obstructing a British sea-fishery officer in the exercise of such a power.
   (2B) Subsection (2A) above is without prejudice to any power of arrest conferred by law apart from that subsection.”.

(4) In the title to section 4D, for “4C” substitute “4CA”.
(5) After section 24 insert—

“24A Crown application: Scotland

(1) Section 4CA binds the Crown and applies in relation to Crown land as it applies in relation to other land.

(2) Nothing in that section is to be taken as in any way affecting Her Majesty in Her private capacity.

(3) No contravention by the Crown of section 4D(2) in respect of a failure to comply with a requirement under a power conferred by section 4CA makes the Crown criminally liable.

(4) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(5) For the purposes of subsection (1), “Crown land” means land an interest in which—
   (a) belongs to Her Majesty in right of the Crown,
   (b) belongs to an office-holder in the Scottish Administration or a government department or is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department

(6) In subsection (5), “an office-holder in the Scottish Administration” is to be construed in accordance with section 126(7)(a) of the Scotland Act 1998.”.

Power to charge in connection with fisheries functions

Tavish Scott

78 In section 50, page 44, line 6, leave out <functions> and insert <services>
In section 50, page 44, line 8, leave out <functions> and insert <services>

In section 50, page 44, line 9, leave out <functions> and insert <services>

In section 50, page 44, line 13, leave out <functions> and insert <services>

In section 50, page 44, line 16, at end insert—

- for specifying the services for which charges may be imposed.

In section 50, page 44, line 21, leave out <functions> and insert <services>

In section 50, page 44, line 30, leave out <function> and insert <service>

In section 50, page 44, line 33, leave out <function> and insert <service>

In section 50, page 44, line 36, leave out <such> and insert—

- representatives of the fish farm and shellfish farm industry,
  - persons on whom charges are likely to be imposed, or representatives of such persons,
  - persons who, so far as the Scottish Ministers can reasonably ascertain, are also providers of the services for which charges may be imposed, or representatives of such persons,
  - such other

In section 50, page 44, line 38, leave out <functions> and insert <services>

In section 50, page 45, line 4, leave out <functions> and insert <services>

In section 51, page 46, line 34, at end insert—

Report on fixed penalty notices

In section 51, page 46, line 34, at end insert—
After section 31 (withdrawal of fixed penalty notice or expiry of period for paying) insert—

**“31A Reports on fixed penalty notices**

(1) The Scottish Ministers must prepare and publish a report on fixed penalty notices as soon as practicable after the end of each reporting period.

(2) A report under subsection (1) must include—

(a) the number of fixed penalty notices issued in the reporting period,

(b) the offences for which those fixed penalty notices were issued.

(3) In this section, “reporting period” means the period of 3 months—

(a) in the case of the first report, beginning on the day on which section 51 of the Aquaculture and Fisheries (Scotland) Act 2013 comes into force,

(b) in the case of a subsequent report, the period beginning on the day after the end of the preceding reporting period.”."