

# **AQUACULTURE AND FISHERIES (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 1: Fish Farms and Shellfish Farms**

##### **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

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

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).