

MARINE (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 6 – Conservation of Seals

Offence: killing, injuring or taking seals

Section 107 - Offence: killing, injuring or taking seals

168. Section 107 provides for an offence of killing, injuring or taking a seal.

Section 108 - Exceptions: alleviating suffering

169. Section 108 sets out exceptions to the section 107 offence where the act was to alleviate suffering of a seriously disabled animal through humane killing or tending and releasing. The section places a duty on a person who kills, injures or takes a seal in accordance with these exceptions to report the matter to Scottish Ministers and provides for an offence of failing to comply with this duty.

Section 109 - Exceptions: licensed activity

170. Section 109 sets out a further exception to the section 107 offence where the act was carried out in accordance with a seal licence.

Seal licences

Section 110 - Seal licences

171. Section 110 sets out in detail the purposes for which Scottish Ministers may issue licences to kill or take seals, specifies information that Scottish Ministers must have regard to before granting such a licence and provides the power to require an applicant for a seal licence to provide such information as is reasonably required.

Section 111 - Methods of killing or taking seals under seal licence

172. Section 111 sets out that a seal licence must specify the method to be used to kill or take seals and that Scottish Ministers must not grant a licence to kill seals by shooting unless satisfied that the marksman involved has adequate skills and experience. It also provides that a seal licence must not authorise anything that would contravene regulation 41 of the Conservation (Natural Habitats, &c.) Regulations 1994, but that this does not restrict the things for which a licence may be issued under regulation 44 of those Regulations.

Section 112 - Seal licence conditions

173. Section 112 provides that seal licences must specify a maximum number of seals which may be killed or taken and the type of firearm to be used in shooting seals. It also provides for a number of other conditions which must be specified and for conditions that may be specified including possible close seasons to protect heavily pregnant or

nursing seals The section provides for an offence of failing to comply with licence conditions and for a defence to that offence.

Section 113 – Seal licence reports

174. **Section 113** requires the licensee to report to Scottish Ministers every three months from issue of the licence on certain matters, including providing “nil” returns.

Section 114 - Variation or revocation of seal licence

175. **Section 114** enables Scottish Ministers to vary or revoke a seal licence at any time.

Section 115 - Seal licence fees

176. **Section 115** enables Scottish Ministers to make regulations to introduce fees for seal licences.

Section 116 - Consultation and consent

177. **Section 116** places a duty on Scottish Ministers to consult the Natural Environment Research Council before granting or varying any seal licence and to obtain the consent of Scottish Natural Heritage in relation to seal licences granted for specified purposes in relation to the conservation of habitats and species, introduction of species to particular areas and protecting zoological or botanical collections. The consent of SNH is only required where the licence authorises killing or taking in a “protected area” (as defined in the section).

Section 117 – Offence: harassment at haul-out sites

178. **Section 117** provides for an offence of harassing a seal at a designated haul-out site and for such designations to be made by order by Scottish Ministers after consulting the Natural Environment Research Council.

Seal conservation areas

Section 118 - Seal conservation areas

179. **Section 118** enables Scottish Ministers to designate seal conservation areas where they consider it necessary to ensure the proper conservation of seals, places a duty on them to consult the Natural Environment Research Council before doing so, and sets out requirements in relation to publishing such designations.

Section 119 - Effect of seal conservation area status: licensing decisions

180. **Section 119** sets out the effect of a seal conservation area designation on licensing decisions - specifically that Scottish Ministers should not grant a licence to kill or take seals in such an area unless they are satisfied that there is no satisfactory alternative and that this will not be detrimental to the maintenance of the seal population at favourable conservation status.

Authorisations to enter land

Section 120 - Power to enter land to obtain information about seals

181. **Section 120** enables Scottish Ministers to authorise any person to enter land to obtain information about seals, provided that notice is given to the occupier of the land. It also specifies that there must be consultation with the Natural Environment Research Council before such an authorisation is given.

Section 121 - Power to enter land to protect fisheries or fish farms from seals

182. [Section 121](#) enables Scottish Ministers to authorise any person to enter land to kill or take seals in accordance with a licence granted for the purpose of preventing them from seriously damaging fisheries or fish farms, provided that notice is given to the occupier of the land. It also specifies that there must be consultation with the Natural Environment Research Council before such an authorisation is given.

Section 122 - Duty to notify occupier

183. [Section 122](#) sets out details for the giving of notice to the occupier of the land of an authorisation to enter land made under sections 120 and 121.

Section 123 - Duty to produce authority

184. [Section 123](#) places a duty on anyone entering land to produce evidence of their authority if asked to do so.

Section 124 - Obstructing an authorised person

185. [Section 124](#) provides for an offence of obstructing a person from entering land to carry out authorised activities.

Supplementary

Section 125 - Advice on seal population

186. [Section 125](#) provides that Scottish Ministers must have regard to any advice about the management of seal populations given to them by the Natural Environment Research Council.

Section 126 - Police powers: search and seizure

187. [Section 126](#) sets out police powers of search and seizure in relation to offences under this Part.

Section 127 - Forfeiture

188. [Section 127](#) sets out court powers of forfeiture in relation to offences under this Part.

Section 128 - Penalties

189. [Section 128](#) sets out penalties in relation to offences under this Part.

Section 129 – Duty to review seal licensing regime

190. [Section 129](#) places a duty on Scottish Ministers to review the operation of the seal licensing system every five years.

Section 130 - Repeal

191. [Section 130](#) provides for repeal of the Conservation of Seals Act 1970.