

## MARINE (SCOTLAND) ACT 2010

### PART 6

#### CONSERVATION OF SEALS

*Offence: killing, injuring or taking seals*

107 Offence: killing, injuring or taking seals

108 Exceptions: alleviating suffering

109 Exceptions: licensed activity

*Seal licences*

110 Seal licences

111 Methods of killing or taking seals under seal licence

112 Seal licence conditions

113 Seal licence reports

114 Variation or revocation of seal licence

115 Seal licence fees

116 Consultation and consent

*Protection at haul-out sites*

117 Offence: harassment at haul-out sites

*Seal conservation areas*

118 Seal conservation areas

119 Effect of seal conservation area status: licensing decisions

*vi Marine (Scotland) Act 2010 (asp 5)*

*Authorisations to enter land*

120 Power to enter land to obtain information about seals

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

122 Duty to notify occupier

123 Duty to produce authority

124 Obstructing an authorised person

*Supplementary*

125 Advice on seal population

126 Police powers: search and seizure

127 Forfeiture

128 Penalties

129 Duty to review seal licensing regime

130 Repeal

### PART 6

#### CONSERVATION OF SEALS

*Offence: killing, injuring or taking seals*

#### **107 Offence: killing, injuring or taking seals**

Killing, injuring or taking a live seal (intentionally or recklessly) is an offence.

#### **108 Exceptions: alleviating suffering**

(1) It is not an offence under section 107 for a person to end a seal's life humanely (or to injure a seal when attempting to do so) if—

(a) it has been seriously disabled (otherwise than by the person's unlawful conduct),

(b) it has no reasonable chance of recovering, and

(c) ending its life—

(i) is the only satisfactory way to end its suffering, and

(ii) is not detrimental to the maintenance of the population of any species of seal at a favourable conservation status in their natural range (within the meaning of Article 1(e) of the Habitats Directive).

(2) It is not an offence under section 107 for a person to take a seal (or to kill or injure a seal

when attempting to take it) if—

(a) it has been disabled (otherwise than by the person's unlawful conduct),

(b) it is (or is to be) taken only in order to—

(i) tend it with a view to releasing it after it has recovered, or

(ii) release it after it has been tended,

(c) it is (or is to be) taken in a manner and in circumstances unlikely to cause the seal to suffer unnecessarily, and

(d) taking it—

(i) is the only satisfactory way to help it to recover, and

(ii) is not detrimental to the maintenance of the population of any species of seal at a favourable conservation status in their natural range (within the meaning of Article 1(e) of the Habitats Directive).

*Marine (Scotland) Act 2010 (asp 5) 65*

*Part 6—Conservation of seals*

(3) It is the duty of a person who kills, injures or takes a seal in a manner which is lawful by

virtue of this section to report the matter to the Scottish Ministers as soon as reasonably practical after doing so.

(4) Failure to comply with the reporting duty is an offence.

#### **109 Exceptions: licensed activity**

It is not an offence under section 107—

(a) to kill or take a seal in accordance with a seal licence,

(b) to take a seal in order to, or to injure a seal when attempting to, kill it in accordance with a seal licence,

(c) to kill or injure a seal when attempting to take it in accordance with a seal licence, or

(d) to do anything in accordance with a licence granted under regulation 44 of the Conservation (Natural Habitats, &c.) Regulations.

*Seal licences*

#### **110 Seal licences**

(1) The Scottish Ministers may grant a licence (a “seal licence”) authorising the killing or taking of seals—

(a) for scientific, research or educational purposes,

(b) to conserve natural habitats,

(c) to conserve seals or other wild animals (including wild birds) or wild plants,

(d) in connection with the introduction of seals, other wild animals (including wild birds) or wild plants to particular areas,

(e) to protect a zoological or botanical collection,

(f) to protect the health and welfare of farmed fish,

(g) to prevent serious damage to fisheries or fish farms,

(h) to prevent the spread of disease among seals or other animals (including birds) or plants,

(i) to preserve public health or public safety, or

(j) for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment.

(2) Before granting a seal licence under subsection (1)(g), the Scottish Ministers must have

regard to any information they have about—

(a) damage which seals have already done to the fishery or fish farm concerned or to

any other fishery or fish farm which is in the vicinity of, or which is of a similar type to, the fishery or fish farm concerned, and

(b) the effectiveness of non-lethal alternative methods of preventing seal damage to the fishery or fish farm concerned or to any other fishery or fish farm which is in the vicinity of, or which is of a similar type to, the fishery or fish farm concerned.

*66 Marine (Scotland) Act 2010 (asp 5)*

*Part 6—Conservation of seals*

(3) The Scottish Ministers may require an applicant for a seal licence under subsection (1)(g) to provide them with such information about the matters mentioned in paragraphs (a) or (b) of subsection (2) as they reasonably require for the purposes of assisting them to decide whether to grant the seal licence.

### **111 Methods of killing or taking seals under seal licence**

(1) A seal licence must specify the method which the licensee must use to kill or take seals.

(2) The Scottish Ministers must not grant a seal licence authorising a person to kill seals by shooting unless they are satisfied that the person has adequate skills and experience in using firearms.

(3) A seal licence must not authorise a person to do anything which would contravene regulation 41 of the Conservation (Natural Habitats, &c.) Regulations.

This subsection does not restrict the things for which a licence may be granted under regulation 44 of those Regulations.

### **112 Seal licence conditions**

(1) A seal licence must impose conditions—

(a) specifying the maximum number of seals which may be killed or taken, and  
(b) specifying steps which must be taken in relation to any seal injured when attempting to kill or take it in accordance with the seal licence in order to reduce the risk of it suffering unnecessarily.

(2) A seal licence which authorises the killing of seals by shooting must impose conditions—

(a) specifying the type of firearm which must be used,  
(b) specifying the weather conditions in which a person may attempt to shoot a seal,  
(c) specifying how close a person must be to a seal before attempting to shoot it,  
(d) prohibiting a person from attempting to shoot a seal from an unstable platform,  
and

(e) about the recovery of carcasses.

(3) A seal licence may impose other conditions.

(4) Conditions may, for example, specify—

(a) the area in which seals may be killed or taken,  
(b) the species of seal which may be killed or taken,  
(c) the circumstances in which seals may be killed or taken,  
(d) any period during which seals may not be killed or taken, for example, when females of the species of seal for which the licence has been issued are likely to be in an advanced stage of pregnancy or have dependent pups.

(5) Failure to comply with a condition imposed is an offence.

(6) In any proceedings for such an offence, it is a defence for the person charged to prove

that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

*Marine (Scotland) Act 2010 (asp 5) 67*

*Part 6—Conservation of seals*

### **113 Seal licence reports**

(1) A person to whom a seal licence is granted must send a seal licence report to the Scottish Ministers within 10 days of the end of each reporting period.

(2) A seal licence report is a report which—

(a) states how many seals have, during the reporting period concerned, been—

- (i) killed in accordance with the seal licence,
- (ii) taken in accordance with the seal licence,
- (iii) killed when attempting to take them in accordance with the seal licence,
- (iv) injured when attempting to kill or take them in accordance with the seal licence, or

(b) where no seals have been so killed, taken or injured during the reporting period concerned, states that fact.

(3) A reporting period is—

(a) in the case of a seal licence which has effect for 3 months or longer—

- (i) each period of 3 months following the granting of the seal licence, and
- (ii) any shorter period beginning at the end of such a 3 month period and ending when the seal licence is revoked or otherwise ceases to have effect,

(b) in the case of a seal licence which has effect for fewer than 3 months, the period for which the seal licence has effect.

(4) Failure, without reasonable excuse, to send a seal licence report in accordance with subsection (1) is an offence.

#### **114 Variation or revocation of seal licence**

A seal licence may be varied or revoked at any time.

#### **115 Seal licence fees**

(1) The Scottish Ministers may require an application for a seal licence or a variation of a seal licence to be accompanied by such fee as may be determined by, or in accordance with, regulations made by them.

(2) Regulations may provide for different fees for different descriptions of applications.

#### **116 Consultation and consent**

(1) The Scottish Ministers must consult the Natural Environment Research Council before

granting or varying a seal licence.

(2) The Scottish Ministers must obtain the consent of Scottish Natural Heritage before granting or varying a seal licence authorising the killing or taking of seals in a protected area for a purpose mentioned in any of paragraphs (b) to (e) of section 110(1).

“protected area” means—

- (a) a Nature Conservation MPA,
- (b) a Demonstration and Research MPA,

*68 Marine (Scotland) Act 2010 (asp 5)*

*Part 6—Conservation of seals*

- (c) a Historic MPA,
- (d) a site of special scientific interest,
- (e) an area in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2004 (asp 6) has effect,

(f) a nature reserve (within the meaning of Part 3 of the National Parks and Access to the Countryside Act 1949 (c.97)), or

(g) a European site (within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations).

*Protection at haul-out sites*

#### **117 Offence: harassment at haul-out sites**

Harassing a seal (intentionally or recklessly) at a haul-out site is an offence.

“haul-out site” means any place which the Scottish Ministers, after consulting the

Natural Environment Research Council, by order designate as such for the purposes of this section.

#### *Seal conservation areas*

#### **118 Seal conservation areas**

(1) The Scottish Ministers may designate an area as a “seal conservation area” where they

consider it necessary to do so in order to ensure the proper conservation of seals.

(2) The Scottish Ministers must consult the Natural Environment Research Council before

designating a seal conservation area.

(3) The Scottish Ministers must—

(a) publish a designation in a manner which they consider most likely to bring the proposal to the attention of persons likely to be affected by it,

(b) make a copy of a designation available for inspection at one of their offices at all reasonable hours, and

(c) provide a copy of a designation to any person who requests one.

(4) The Scottish Ministers may charge a fee, not exceeding their expenses, for providing a

copy under subsection (3)(c).

#### **119 Effect of seal conservation area status: licensing decisions**

The Scottish Ministers must not grant a seal licence authorising the killing or taking of seals in a seal conservation area unless they are satisfied—

(a) that there is no satisfactory alternative way of achieving the purpose for which the licence is granted, and

(b) that the killing or taking authorised by the licence will not be detrimental to the maintenance of the population of any species of seal at a favourable conservation status in their natural range (within the meaning of Article 1(e) of the Habitats Directive).

*Marine (Scotland) Act 2010 (asp 5) 69*

*Part 6—Conservation of seals*

*Authorisations to enter land*

#### **120 Power to enter land to obtain information about seals**

(1) The Scottish Ministers may, after consulting the Natural Environment Research Council,

authorise any person to enter any land to obtain information about seals in order to enable or assist the Scottish Ministers to perform their functions under this Part.

(2) Before granting such an authorisation, the Scottish Ministers must give notice to the occupier of the land setting out their intention to do so.

(3) An authorisation must specify—

(a) the land to be entered, and

(b) the period (of no more than 8 weeks) during which the land may be entered.

(4) An authorisation may be conditional.

#### **121 Power to enter land to protect fisheries or fish farms from seals**

(1) The Scottish Ministers may, after consulting the Natural Environment Research Council,

authorise a person to enter land in order to kill or take seals in accordance with a seal licence granted for the purpose of preventing them from causing serious damage to fisheries or fish farms.

(2) Before granting such an authorisation, the Scottish Ministers must—

(a) give notice to the occupier of the land—

(i) setting out their intention to grant the authorisation, and

(ii) informing the occupier of the right to make representations to the Scottish

Ministers within 28 days of the notice, and

(b) have regard to any timeous representations made by the occupier.

(3) An authorisation must specify—

(a) the land to be entered, and

(b) the period (of no more than 8 weeks) during which the land may be entered, and

(c) the number and species of seals that may be killed or taken.

(4) An authorisation may be conditional.

(5) Any seals killed or taken in pursuance of an authorisation belong to the Scottish Ministers (and may be disposed of as they think fit).

### **122 Duty to notify occupier**

(1) The duty to notify an occupier under section 120(2) or 121(2)(a) may be fulfilled—

(a) by hand delivering the notice to the occupier,

(b) by sending the notice, by first class post or by a registered or recorded delivery postal service, in an envelope addressed to the occupier at—

(i) where sent to an individual, the individual's principal place of business or usual or last known abode,

(ii) where sent to a body corporate, the body's registered or principal office, or

(iii) in any other case, the occupier's last known address,

*70 Marine (Scotland) Act 2010 (asp 5)*

*Part 6—Conservation of seals*

(c) by sending the notice to the occupier in some other way (including by email, fax or other electronic means)—

(i) which is legible and capable of being used for subsequent reference, and

(ii) which the sender reasonably considers likely to cause it to be delivered on the same or next day, or

(d) where the occupier's name or address cannot be ascertained after reasonable enquiry—

(i) by hand delivering the notice to a responsible person on the land concerned, or

(ii) by fixing the notice to a conspicuous object on the land concerned.

(2) A notice is, unless the contrary is proved, to be treated as having been given—

(a) where hand delivered, on the day of delivery,

(b) where posted, on the day on which it would be delivered in the ordinary course of post,

(c) where sent in a way described in subsection (1)(c), on the day after it is sent, or

(d) where fixed to an object, on the day it is so fixed.

### **123 Duty to produce authority**

A person doing anything authorised under section 120 or 121 must produce evidence of the person's authority if asked to do so.

### **124 Obstructing an authorised person**

Preventing or obstructing a person from doing anything which the person is authorised to do under section 120 or 121 (intentionally or recklessly) is an offence.

*Supplementary*

### **125 Advice on seal population**

The Scottish Ministers must have regard to any advice about the management of seal populations which is given to them by the Natural Environment Research Council.

### **126 Police powers: search and seizure**

A constable may stop any person who the constable suspects with reasonable cause of committing an offence under this Part and may—

(a) without warrant, search any vehicle or vessel which the constable reasonably believes to have been used in connection with the commission of the offence,

(b) seize any seal, seal skin or other thing liable to be forfeited under section 127.

### **127 Forfeiture**

The court by which a person is convicted of an offence under this Part may order the forfeiture of—

(a) any seal or seal skin in respect of which the offence was committed, or

*Marine (Scotland) Act 2010 (asp 5) 71*

*Part 7—Common enforcement powers etc.: licensing and marine protection etc.*

(b) any thing which the person possessed or controlled at the time of the offence which was capable of being used in connection with the offence.

### **128 Penalties**

(1) A person guilty of an offence under section 107 or 117 is liable, on summary conviction,

to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.

(2) A person guilty of an offence under section 108(4) is liable, on summary conviction, to

a fine not exceeding level 4 on the standard scale.

(3) A person guilty of an offence under section 112(5) or 113(4) is liable, on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 5 on the standard scale, or to both.

(4) A person guilty of an offence under section 124 is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

### **129 Duty to review seal licensing regime**

(1) The Scottish Ministers must review and publish a report on the operation of the seal licensing regime—

(a) within 5 years of section 110 coming into force, and

(b) within each subsequent period of 5 years beginning with the publication of a report.

(2) When carrying out a review, the Scottish Ministers must—

(a) have regard to such scientific evidence on seal biology, welfare and behaviour, and on such other matters, as they consider relevant, and

(b) consult the Natural Environment Research Council and such other persons as they consider appropriate.

(3) The Scottish Ministers must have regard to their most recent report when performing functions under the seal licensing regime.

(4) In this section, “seal licensing regime” means the provisions of this Part relating to seal

licences.

### **130 Repeal**

The Conservation of Seals Act 1970 (c.30) is repealed.