



Law Society
of Scotland

Consultation response

Consultation on fish farms: containment of and prevention of escape of fish - draft code of practice

August 2021



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Marine Law Sub-committee welcomes the opportunity to respond to the Scottish Government's *Consultation on fish farms: containment of and prevention of escape of fish - draft code of practice*¹ (the Code). We do not seek to respond to the consultation questions but have general comments to make in relation to the use of codes of practice.

General comments

We note that in this instance, the Scottish Ministers have powers under section 7 of the Aquaculture and Fisheries (Scotland) Act 2007 to approve a code of practice, in whole or in part, for specified purposes. Once approved, such a code of practice is subject to monitoring and enforcement as provided in section 8 of the Act.

In general terms, the legal status of codes of practice can lack clarity with differences in the manner in which they may be drawn up (for example by sectoral bodies (with or without government approval), by official bodies or by Scottish Ministers) and their legal status (for example, some are statutory in that Scottish Ministers are required to prepare them; some have the force of law in relation to enforcement of some or all of their contents with the potential for legal consequences if not adhered to; others may be wholly advisory, and/or be relevant or material considerations for discretionary decisions; and others may contain specific rules which must be followed, with legal consequences if not). In the interests of ensuring the rule of law, it is important that the law is as clear and precise as possible. Individuals and businesses need to be able to guide their behaviour by a clear understanding of the standards of conduct expected and an understanding of the implications of not adhering to expected standards.

We therefore welcome the distinction drawn in the Code between guidance for Aquaculture Production Businesses and mandatory standards with which businesses must comply, and the fact that the introduction to the Code explicitly sets out the consequences of non-compliance.

¹ <https://www.gov.scot/publications/aquaculture-code-practice-containment-prevention-escape-fish-fish-farms-relation-marine-mammal-interactions/>



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