

From: Minister for Parliamentary Business

Minister for Environment and Climate Change

**AQUACULTURE AND FISHERIES (SCOTLAND) BILL: REQUEST FOR AGREEMENT TO INTRODUCTION ON 3 OCTOBER 2012**

**[redacted – out of scope]**

1. [redacted – out of scope]

**[redacted – out of scope]**

2. [redacted – out of scope]

**Crown Consent**

3. I am grateful for your confirmation that Crown consent will be needed and that it will be signified at Stage 3.

**[redacted – out of scope]**

4. [redacted – out of scope]

**[redacted – out of scope]**

5. [redacted – out of scope]

**[redacted – out of scope]**

6. [redacted – out of scope]

**[redacted – out of scope]**

7. [redacted – out of scope]

8. [redacted – out of scope]

9. [redacted – out of scope]

**[redacted – out of scope]**

10. [redacted – out of scope]

11. [redacted – out of scope]

12. [redacted – out of scope]

**[redacted – out of scope]**

**13. [redacted – out of scope]**

**[redacted – regulation 11(2)]**  
**October 2012**

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
First Minister					X
Lord Advocate					X
Cabinet Secretary for Finance, Employment and Sustainable Growth					X
Cabinet Secretary for Rural Affairs and Environment					X

DG Enterprise, Environment and Digital  
 Director Marine Scotland  
 Willie Cowan  
 Mike Palmer  
 Cephas Ralph  
 George Burgess  
 [redacted – regulation 11(2)]  
 [redacted – regulation 11(2)]  
 [redacted – regulation 11(2)]  
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 [redacted – regulation 11(2)]  
 [redacted – regulation 11(2)]  
 [redacted – regulation 11(2)]  
 [redacted – regulation 11(2)]  
 [redacted – regulation 11(2)]  
 [redacted – regulation 11(2)]  
 Willie Ferrie  
 [redacted – regulation 11(2)]  
 [redacted – regulation 11(2)]  
 [redacted – regulation 11(2)]  
 [redacted – regulation 11(2)]  
 [redacted – regulation 11(2)]  
 Sam Anson  
 [redacted – regulation 11(2)]  
 [redacted – regulation 11(2)]  
 Cabinet Secretariat  
 Communications Greener  
 [redacted – regulation 11(2)]

From: [redacted]  
Aquaculture and Fisheries Bill Team  
Performance, Aquaculture and Recreational Fisheries Division  
Marine Scotland  
10 April 2013

To:

1. Minister for Environment and Climate Change
2. Cabinet Secretary for Rural Affairs and the Environment
3. First Minister

## **AQUACULTURE AND FISHERIES (SCOTLAND) BILL – CROWN CONSENT**

### **Purpose**

1. To provide a draft letter for the First Minister's office to send to the Private Secretary to Her Majesty the Queen seeking the Queen's consent to the provisions of the Aquaculture and Fisheries (Scotland) Bill.

### **Priority**

2. **URGENT.** Crown Consent requires to be signified at the start of Stage 3 which is provisionally timetabled for 15 May 2013.

### **Background**

3. It is a Parliamentary requirement that Crown consent is required for any Bill which affects directly or indirectly the prerogative, hereditary revenues or the personal property or interests of the Crown.

4. The Aquaculture and Fisheries (Scotland) Bill was introduced 3<sup>rd</sup> October 2012 with the Stage 1 debate taking place on 28<sup>th</sup> February 2013. Stage 2 completed on 27<sup>th</sup> March 2013. Stage 3 is expected to be held on 15<sup>th</sup> May 2013. The Bill contains provisions which may affect the hereditary revenues of the Crown and also the personal property of Her Majesty.

5. Part 1 of the Bill contains provisions in relation to aquaculture which could impact upon the hereditary revenues of the Crown. In particular, section 2(3) of the Bill amends the Aquaculture and Fisheries (Scotland) Act 2007 to enable the Scottish Ministers to take samples of fish from fish farms to ascertain (amongst other things) the source of fish escapes. Section 3 of the Bill enables Ministers to make regulations specifying technical specifications for equipment to be used in fish farming. Section 50 of the Bill contains provisions enabling Ministers to impose charges for certain fisheries functions.

6. The proposals in the Bill in relation to salmon and freshwater fisheries could impact on Her Majesty's private estate. Part 2 of the Bill contains, in particular, provisions to amend Part 6 of the Salmon and Freshwater Fisheries

(Consolidation)(Scotland) Act 2003 (Parts 2, 3 and 4 of the 2003 Act currently apply to Crown land, including salmon fisheries.)

7. The Bill extends the application of the provisions to amend the Salmon and Freshwater Fisheries (Consolidation)(Scotland) Act 2003 (sections 21 and 28 of the Bill) to the Crown. At present, statistics in relation to Her Majesty's salmon fishings at Balmoral are currently provided to the River Dee Salmon Fishery Board on a voluntary basis, to enable that Board to compile data on stock levels, etc within the River Dee. The provisions of sections 23 and 24 of the Bill extend the Scottish Ministers' powers to enable them to require persons with rights in a salmon or freshwater fishery to provide them with information, or for authorised persons to take fish or samples of fish from such a fishery for monitoring, etc purposes. The exercise of these powers could affect Her Majesty's salmon fishings on the Balmoral estate, although the exercise of such rights would not be undertaken without first obtaining the consent of Her Majesty.

8. Amendments are to be lodged at Stage 3 which will further extend the application in respect of the 2003 Act. The intention is that section 67 (Crown application) of that Act will be re-cast with the effect that the whole of the 2003 Act will apply in respect of Crown land. This will include Her Majesty's private estates. Part 1 of the 2003 Act creates certain offences which will then apply in respect of acts committed on Crown land. However the Crown will not be criminally liable (although that immunity will not extend to those in the public service of the Crown). Where access to Crown land is sought under the 2003 Act then entry will only be sought with the consent of the appropriate authority being the person nominated under the Royal Sign Manual.

9. Some further amendments were introduced at Stage 2 in respect of unlawful fishing under the Inshore Fishing (Scotland) Act 1984 and the Sea Fisheries (Shellfish) Act 1967. The amendments include further access rights to allow British sea fishery officers to gain access to the foreshore for the purposes of exercising their enforcement functions. Access will include access across Crown land but not Her Majesty's private estates.

10. [redacted]

### **Recommendation**

11. I recommend that you issue the attached letter to the Private Secretary to Her Majesty the Queen, enclosing three copies of the Bill, and the Bill as amended at Stage 2, and accompanying documents. Copies of the letter, enclosing one copy of the Bill in each case, should be sent to the Secretary to the Crown Estate Commissioners and the Queen's Solicitors in Scotland.

**[redacted]**

Aquaculture and Fisheries Bill Team  
Performance, Aquaculture and Recreational Fisheries  
Marine Scotland  
Ext. [redacted]

April 2013

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Lord Advocate Minister for Parliamentary Business					X X

DG – Enterprise and Environment  
 Linda Rosborough, Director Marine Scotland  
 Willie Cowan, Deputy Director for Performance, Aquaculture and Recreational Fisheries  
 [redacted]  
 [redacted]  
 [redacted]  
 [redacted]  
 [redacted]  
 [redacted]  
 [redacted]  
 [redacted]  
 Willie Ferrie  
 [redacted]  
 Malcolm Fleming, Special Adviser  
 Comms Greener

From: [redacted]  
Aquaculture and Fisheries Bill Team  
PARF  
7 May 2013

Minister for Environment and Climate Change

## **AQUACULTURE AND FISHERIES (SCOTLAND) BILL: GOVERNMENT AMENDMENTS AT STAGE 3**

### **Purpose**

1. Following our meeting last Tuesday, to seek the Minister's approval to lodge the attached Government amendments for Stage 3 of the Aquaculture and Fisheries (Scotland) Bill.

### **Priority**

2. Immediate – The Minister will be aware that the Scottish Government deadline for lodging Stage 3 amendments is 4.30 pm on Wednesday 8 May. Stage 3 of the Bill will take place on 15 May.

### **Background**

3. At our meeting last week we talked through the planned Government amendments at Stage 3, many of which address some consequential changes following Stage 2. The background to the amendments, together with an assessment of the impact of the changes, likely stakeholder reaction and a view as to whether they would be controversial or otherwise, is attached at Annex A. The draft amendments are set out in Annex B.

4. [redacted – out of scope]

[redacted – out of scope]

5. [redacted – out of scope]

### **Recommendation**

6. We recommend that the Minister confirms that he is content to clear the attached amendments (number 6-17 at Annex B) for lodging on Wednesday 7 May.

[redacted]  
Aquaculture and Fisheries Bill Team  
PARF  
7 May 2013  
Ext [redacted]





**AQUACULTURE AND FISHERIES (SCOTLAND) BILL: POTENTIAL GOVERNMENT AMENDMENTS AT STAGE 3**

[redacted – out of scope]

**Section 55**

- **Crown Application**

1. We have been looking again at Section 55 and the extent to which the provisions within the Bill impact upon the Crown. As a consequence, we are currently looking to pursue three amendments:

**Amendment 1**

2. This substitutes a new section 67 in the 2003 Act, modelled on section 162 of the Marine (Scotland) Act 2010. Its purpose is to extend the whole of the 2003 Act to Crown land so that activities which amount to offences on any other land will continue to be so when carried out on Crown land. Crown land is defined in subsections (6) and (7) to include Her Majesty's private estates (as well as government owned property). Although the approach of expressly including Her Majesty's private estates differs from that taken in relation to the new powers of entry relating to the 'cockle fishing' amendments, we consider that this is defensible given the Queen's position as a proprietor of salmon fisheries in Her private capacity and the application of the 2003 Act.

3. Provision is made requiring consent to be sought before certain powers of entry to the private estates may be exercised; specifically, bailiff's powers of entry under section 54(1) of the 2003 Act and those of "persons authorised by Scottish Ministers" for the purposes of conducting investigations and carrying out sampling activities under section 64 and new section 64A. [redacted]

**Amendment 2**

4. An amendment to the provision which deals with Crown application in respect of those stand alone provisions in the Bill (mainly in respect of aquaculture). It is designed to make a distinction between Crown immunity from prosecution and the fact that Crown servants will not enjoy the same immunity.

**Amendment 3**

5. This removes section 55(3) of the Bill in consequence of the insertion of a new section 67 in the 2003 Act.

**Handling**

6. [redacted]

**April 2013**

**Aquaculture and Fisheries (Scotland) Bill - Stage 3**

- [redacted – out of scope]

**After section 29**

- **Paul Wheelhouse**

**12** After section 29, insert—

*<Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003: Crown application*

**Application of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 to the Crown**

For section 67 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (Crown application) substitute—

**“67 Application of this Act to the Crown**

- (1) This Act binds the Crown and applies in relation to Crown land as it applies in relation to any other land.
- (2) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.
- (3) 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.
- (4) Despite subsection (2), any provision made by or under the provisions of this Act applies to persons in the public service of the Crown as it applies to other persons.
- (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 or in right of Her private estates,
  - (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) The powers conferred by sections 54(1), 64(1)(a) and 64A(1)(c) are exercisable in relation to land an interest in which belongs to Her Majesty in right of Her private estates only with the consent of a person appointed by Her Majesty under the Royal Sign Manual or, if no such appointment is made, by the Scottish Ministers.
- (7) In this section—
  - (a) references to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862,
  - (b) “Government department” means a department of the United Kingdom government.
- (8) For the purposes of this section, “land” includes salmon fisheries.”.>

[redacted – out of scope]

## Section 55

- **Paul Wheelhouse**

16 In section 55, page 54, line 30, at end insert—

<( ) Despite subsection (1), any provision made by or under the provisions of this Act applies to persons in the public service of the Crown as it applies to other persons.>

- **Paul Wheelhouse**

17 In section 55, page 54, line 31, leave out subsection (3)