



# Sea Fisheries (Shellfish) Act 1967

## 1967 CHAPTER 83

### *Fisheries for shellfish*

#### **1 Power to make orders as to fisheries for shellfish**

- (1) Subject to the provisions of this section, the appropriate Minister may, on an application made to him in accordance with subsection (2) of this section, by order provide for the establishment or improvement, and for the maintenance and regulation, of a fishery for shellfish of any one or more of the following descriptions, that is to say, oysters, mussels and cockles, on any portion of the shore and bed of the sea, or of an estuary or tidal river, above or below, or partly above and partly below, low water mark and within so much of the exclusive fishery limits of the British Islands as is adjacent to Great Britain (which shore and bed are in this Act referred to as "the sea shore") and, if desirable, for the constitution of a board or body corporate for the purposes of the order.
- (2) An application for an order under this section shall be made in such form and manner as may be prescribed by regulations made by the appropriate Minister; and the provisions of Schedule 1 to this Act shall have effect in relation to the making of orders under this section.
- (3) An order under this section may confer on such persons as may be specified in the order—
  - (a) a right of several fishery with respect to the whole of the area of the fishery to which the order relates, or
  - (b) a right of regulating a fishery with respect to the whole of that area, or
  - (c) a right of several fishery with respect to such part of that area as may be specified by or under the order and a right of regulating a fishery with respect to the remainder,but shall not confer either right for a longer period at one time than sixty years.
- (4) An order under this section shall not be made with respect to any portion of the sea shore which belongs to Her Majesty in right of the Crown or forms part of the possessions of the Duchy of Lancaster or of the Duchy of Cornwall except with the appropriate consent, that is to say—

- (a) the consent of the Crown Estate Commissioners, or
  - (b) the consent of the Chancellor of the Duchy of Lancaster in writing under his hand attested by the clerk of the Council of the Duchy, or
  - (c) the consent of the Duke of Cornwall or the other persons for the time being empowered to dispose for any purpose of lands of the Duchy of Cornwall,
- as the case may be.
- (5) No order under this section shall take away or abridge any right of several fishery or any right on, to or over any portion of the sea shore, being a right enjoyed by any person under any local or special Act of Parliament or any Royal charter, letters patent, prescription, or immemorial usage, except with the consent of that person.
- (6) Any order made under this section may be varied by a subsequent order made thereunder ; and the foregoing provisions of this section shall apply in relation to any such subsequent order and to an application for such an order as they apply in relation to an original order made under this section and to an application for such an order.

## **2 Effect of grant of right of several fishery**

- (1) Where an order under section 1 of this Act confers a right of several fishery, then, subject to any restrictions and exceptions contained in the order and to section 12 of this Act, the grantees shall have within the limits of the fishery, or of that part of the fishery within which the right is exercisable, the exclusive right of depositing, propagating, dredging, fishing for and taking shellfish of any description to which the order applies, and in the exercise of that right may within those limits—
- (a) make and maintain beds for such shellfish ;
  - (b) at any season collect such shellfish and remove them from place to place and deposit them as and where the grantees think fit;
  - (c) do all other things which the grantees think proper for obtaining, storing and disposing of the produce of their fishery.
- (2) In this section " the grantees " means the persons for the time being entitled to the right of several fishery conferred by the order under the said section 1.

## **3 Effect of grant of right of regulating a fishery**

- (1) Where an order under section 1 of this Act confers on the grantees a right of regulating a fishery for any specified description of shellfish and imposes restrictions on, or makes regulations respecting, the dredging, fishing for and taking of any specified description of shellfish within the limits of the regulated fishery, or of that part of the fishery within which the right is exercisable, or imposes tolls or royalties upon persons dredging, fishing for and taking any specified description of shellfish within the limits of that fishery or part, then, subject to any restrictions and exceptions contained in the order and to section 12 of this Act, the grantees shall have power to do all or any of the following things, namely—
- (a) to carry into effect and enforce any such restrictions and regulations;
  - (b) to levy any such tolls or royalties;
  - (c) to provide for depositing and propagating shellfish of any description to which the order applies within those limits and for improving and cultivating the regulated fishery or regulated part, as the case may be.

- (2) Subject to the provisions of section 4 of this Act, all such restrictions, regulations, tolls and royalties as aforesaid shall be imposed on and apply to all persons equally, and shall be for the benefit of the regulated fishery or part only, and any such tolls and royalties shall be applied in the improvement and cultivation of that fishery or part.
- (3) Any person who dredges, fishes for or takes shellfish of any description to which any such order applies in contravention of any such restriction or regulation, or without paying any such toll or royalty, as aforesaid shall be guilty of an offence and liable on summary conviction to a fine not exceeding £20 and to forfeit all such shellfish so taken or, if they have been sold, a sum equal to their value ; and any shellfish or sum so forfeited shall be recoverable in like manner as a fine.
- (4) The court by which any such forfeiture is imposed may direct the shellfish or sum forfeited to be delivered or paid to the grantees to be applied by them for the improvement and cultivation of the regulated fishery or part.

#### **4 Licensing powers in case of regulated fishery**

- (1) This section applies to an order made under section 1 of this Act, being an order which confers a right of regulating a fishery.
- (2) The restrictions imposed by an order to which this section applies may include restrictions prohibiting all persons from dredging, fishing for or taking, within the limits of the fishery or of that part of the fishery within which the right is exercisable, shellfish of the description to which the order applies except under the authority of a licence issued in that behalf by the grantees.
- (3) Any power to vary an order to which this section applies shall (without prejudice to the generality of that power) include power to vary the order so as to impose restrictions in accordance with subsection (2) of this section.
- (4) Where an order to which this section applies (either as originally made or as varied) imposes any such restrictions, then, subject to the provisions of the order and of this section, licences may be issued under the order in such numbers and to such persons, and operative for such periods, and may authorise the dredging, fishing for or taking of shellfish at such times, in such manner and to such extent, as the grantees may determine.
- (5) Where in pursuance of such an order the grantees propose to issue licences, they shall, unless they propose to issue licences to all such persons as may apply for them, notify the appropriate Minister of their intention; and the appropriate Minister may give directions to the grantees as to the exercise of their powers under subsection (4) of this section.
- (6) If the grantees issue or withhold licences without complying with the requirements of subsection (5) of this section or of any directions given thereunder, then, for the purposes of section 5 of this Act (and without prejudice to the generality of that section) the grantees shall be taken not to be properly carrying into effect the restrictions imposed by the order; but no licence issued in contravention of any such requirements shall be invalid by reason only that it was so issued.
- (7) Any licence issued under an order to which this section applies may with the consent of the appropriate Minister be cancelled by the grantees if the person to whom the licence is issued, having been convicted of an offence of contravening a restriction imposed by the order, is subsequently convicted of another such offence ; but, except

as provided by this subsection, a licence so issued shall not be cancelled before it is due to expire unless the person to whom it was issued dies or surrenders the licence.

- (8) In this section any reference to the imposition of restrictions includes a reference to the making of regulations.

## **5 Cesser of right conferred by order under s.1**

- (1) If, in the case of any right of several fishery or of regulating a fishery conferred by an order made under section 1 of this Act, the appropriate Minister is not satisfied, either as respects the whole of the area within which that right is exercisable or as respects any part of that area, that the grantees are properly cultivating the ground for shellfish of any description to which the order applies within the limits of that area or part or properly carrying into effect and enforcing any restrictions and regulations contained in the order and levying any tolls or royalties imposed thereby, he may make a certificate to that effect and thereupon that right shall be absolutely determined as respects that area or, as the case may be, that part thereof, and the provisions of this Act shall cease to operate in relation to that area or, as the case may be, that part thereof as, or, as the case may be, as part of, a several or regulated fishery.
- (2) For the purpose of subsection (1) of this section, the appropriate Minister may from time to time, with respect to any such fishery, make such inquiries and examination by an inspector or otherwise, and require from the grantees such information, as that Minister thinks necessary or proper, and the grantees shall afford all facilities for such inquiries and examination, and give such information, accordingly.
- (3) For the purpose of carrying out any inquiry or examination with respect to a fishery in pursuance of subsection (2) of this section, any inspector or other person appointed by the appropriate Minister under that subsection may take evidence, and by summons under his hand require the attendance of any person and examine him and any person who attends before him, on oath or otherwise, as he thinks expedient, and may administer an oath or take any affidavit or declaration for the purpose of the inquiry or examination.
- (4) For the purpose of carrying out any such inquiry or examination, a person authorised in that behalf by the appropriate Minister shall, subject to subsection (5) of this section, have the right, at any reasonable time, to enter any land within the limits of the fishery, and to obtain and take away samples (which shall be marked, labelled or otherwise made capable of identification) of any shellfish found within those limits; and, notwithstanding anything contained in this Act, when the purpose for which any such sample was taken has been satisfied the person by whom the sample was taken may dispose of it as he may determine.
- (5) A right of entry under subsection (4) of this section shall not be exercisable in respect of any land unless not less than twenty-four hours' notice of the intended entry has been given to the occupier of the land, and also to the grantees if they are not the occupiers of the land; and the person exercising the right shall, if so requested, produce written evidence of his authority before entering.
- (6) Any duty imposed on any person by subsection (2) of this section to afford facilities for any inquiry or examination in respect of a fishery shall include a duty to afford facilities for the exercise of any right exercisable in respect of the fishery in accordance with subsections (4) and (5) of this section.

- (7) Any person who obstructs an inspector or other person in the exercise of any power or right conferred by this section, or who refuses or without reasonable excuse fails to provide any information reasonably required by an inspector or other person in the exercise of any such power or right, shall be guilty of an offence and liable on summary conviction to a fine not exceeding £50.
- (8) In this section " the grantees ", in relation to a right of several fishery, means the persons for the time being entitled to that right.
- (9) In the application of this section to Scotland, subsection (3) shall have effect as if for the words " summons under his hand " there were substituted the words " an order signed by him ".

## **6 Report to Parliament**

The appropriate Minister shall after the end of every year prepare a report respecting the applications to, and proceedings of, that Minister under the foregoing provisions of this Act during that year and shall lay a copy of it before each House of Parliament.

## **7 Protection of fisheries**

- (1) The provisions of this section shall have effect where—
  - (a) an order under section 1 of this Act grants a right of several fishery, or
  - (b) a private oyster bed is owned by any person independently of this Act and is sufficiently marked out or sufficiently known as such.
- (2) All shellfish of a description to which the order applies in or on a bed for such shellfish within the area of the fishery with respect to which the right of several fishery is conferred, or, as the case may be, all oysters in or on the private oyster bed, shall be the absolute property of the grantees or, as the case may be, of the owner of the bed and in all courts and for all purposes shall be deemed to be in the actual possession of the grantees or, as the case may be, owner.
- (3) All such shellfish removed by any person from a bed for such shellfish within the area of the fishery with respect to which the right of several fishery is conferred, or, as the case may be, all oysters removed by any person from the private oyster bed, shall, unless sold in market overt or disposed of by or under the authority of the grantees or, as the case may be, of the owner of the bed, be the absolute property of the grantees or, as the case may be, of the owner, and in all courts and for all purposes the absolute right to the possession thereof shall be deemed to be in the grantees or, as the case may be, owner.
- (4) Subject to subsection (5) of this section, if within the limits of the area of the fishery with respect to which the right of several fishery is conferred or in any part of that area described for the purposes of this subsection in the order, or within the limits of any such private oyster bed, any person other than the grantees or an agent or employee of theirs or, as the case may be, the owner or an agent or employee of his knowingly does any of the following things, namely—
  - (a) uses any implement of fishing except—
    - (i) a line and hook; or
    - (ii) a net adapted solely for catching floating fish and so used as not to disturb or injure in any manner shellfish of the description in question or any bed therefor or the fishery therefor;

- (b) dredges for any ballast or other substance except under a lawful authority for improving the navigation; .
- (c) deposits any ballast, rubbish or other substance;
- (d) places any implement, apparatus or thing prejudicial or likely to be prejudicial to any such shellfish, bed or fishery except for a lawful purpose of navigation or anchorage;
- (e) disturbs or injures in any manner, except for a lawful purpose of navigation or anchorage, any such shellfish, bed or fishery;

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding, in the case of a first offence, £2 or, in the case of a second offence, £5, or, in the case of a third or subsequent offence, £10, and shall also be liable to make full compensation to the grantees or, as the case may be, owner for all damage sustained by them or him by reason of the unlawful act; and such compensation in default of payment may be recovered from him by the grantees or owner as the case may be by proceedings in any court of competent jurisdiction whether he has been prosecuted for or convicted of the offence in question or not.

- (5) Nothing in subsection (4) of this section shall make it unlawful for any person to do any of the things therein mentioned—
- (a) in the case of a right of several fishery granted by an order under section 1 of this Act, if at the time of his doing that thing the limits of the area of the fishery within which that right is exercisable or of the part, of that area described for the purposes of the said subsection (4) in the order are not sufficiently marked out in manner prescribed by or under the order or if notice of those limits has not been given to that person in manner so prescribed ;
  - (b) in the case of a private oyster bed owned by any person independently of this Act, if the bed is not sufficiently marked out and known as such.
- (6) In this section " the grantees " means the persons for the time being entitled to the right of several fishery conferred by the order under section 1 of this Act.

## **8 Proof of certain matters**

Whenever it is necessary in any legal proceedings to prove that the requirements of an order under section 1 of this Act or of any other Act as to—

- (a) the buoying or other marking of the limits of any fishery for shellfish of any description to which the order applies or, as the case may be, of any fishery for oysters or mussels to which that other Act applies, or
- (b) the publication, posting or distribution of notices of those limits,

have been complied with, or that notice of the provisions of the order or Act relating to the fishery has been duly published, a certificate, purporting to be under the hand of one of the secretaries, under secretaries or assistant secretaries of the appropriate Minister's department, certifying that that Minister is satisfied that those requirements have been complied with or that the said notice was duly published shall be received as evidence of compliance with those requirements or publication of that notice.

## **9 Grants and loans for restoration of fisheries**

- (1) The appropriate Minister may, with the approval of the Treasury, make grants or loans to any person in respect of any expenses incurred or to be incurred by him in cleansing

and reinstating (including restocking) any shellfish beds to which this subsection applies which have been affected by any disease or pest.

(2) Subsection (1) of this section applies—

- (a) to any shellfish bed within the limits of a fishery in respect of which an order under section 1 of this Act is for the time being in force, and
- (b) to any other shellfish bed used for the propagation or cultivation of oysters, mussels or cockles, being a shellfish bed in respect of which a person has an exclusive right to take oysters, mussels or cockles.

## **10 Fishery to be within county, etc. for purposes of jurisdiction**

The portion of the sea shore to which an order under section 1 of this Act relates shall for all purposes of jurisdiction be deemed to be within the body of the adjoining county, borough or burgh (so far as it is not by law within it) or to be within the body of each of them, if more than one.

## **11 Service of certain documents**

Without prejudice to any provision made by or under any other Act prescribing the manner in which service of any document may be effected, service of any summons or other document in any proceedings under section 3(3) or 7(4) of, or paragraph 4(5) of Schedule 1 to, this Act may be effected by leaving the document for the person to be served on board any sea fishing boat to which he belongs with the person being or appearing to be in charge of the boat.