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## SCHEDULES

### SCHEDULE 3

Section 28.

#### ADMINISTRATION

#### PART I

#### ORDERS

##### *Scope*

- [<sup>F1</sup>1 An order may provide—
- (a) for the imposition, collection and recovery by a water authority of contributions assessed on several fisheries regulated by the order or on the owners and occupiers of such fisheries;
  - (b) for enabling the water authority with the approval of the Minister, but subject to paragraphs 2 and 3 below, to erect and work by themselves or their lessees any fixed engine for catching salmon or migratory trout within the area within which the order is to apply;
  - (c) for modifying in relation to the fisheries within the area any of the provisions of this Act which relate to the regulation of fisheries, or of any local Act relating to any fishery within the area.]

#### Textual Amendments

- F1** Sch. 3 paras. 1–5 repealed (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190, [Sch. 27 Pt I](#). (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

- 2 An order shall not authorise a fixed engine to be worked for a period exceeding five years unless authorisation is from time to time extended by licence of the Minister for such terms as may be specified in the licence and not exceeding at any one time five years.
- 3 The Minister shall not grant a licence until he has inquired into the effect of the working of the engine on the salmon or trout fisheries within the area.
- 4 An order may contain any incidental, consequential or supplemental provisions, including provisions for payment of compensation to persons injuriously affected by the order, which may appear to be necessary or proper for the purposes of the order.

##### *Procedure*

- 5 An application for an order may be made by any of the following, namely—
- (a) a water authority;

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- [<sup>F2</sup>(b) a [<sup>F3</sup>county or metropolitan district council];]
- (c) persons who in the opinion of the Minister are the owners of one-fourth at least in value of the several fisheries proposed to be regulated or constitute a majority of the persons holding licences to fish in public waters within the area of the proposed order;
- (d) any association of persons which in the opinion of the Minister is sufficiently representative of fishing interests within that area.

#### Textual Amendments

- F2** Sch. 3 para 5(b) repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 41, Sch. 17 para. 7(1)(14)(a) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)
- F3** Words substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 16, Sch. 8 para. 20

6 The applicant for an order shall give such security for the Minister's expenses as the Minister may require.

[<sup>F4</sup>7 Before he makes an order the Minister shall–

(a) send to the National Rivers Authority a copy of the draft order; and

(b) notify the Authority of the time within which, and the manner in which, objections to the draft order may be made to him;

and the Minister shall not make an order unless the Authority has caused notice of the Ministers' intention to make the order, of the place where copies of the draft order may be inspected and obtained and of the matters notified under subparagraph (b) above to be published in the London Gazette and, if it is directed to do so by the Minister, in such other manner as the Minister thinks best adapted for informing persons affected.]

#### Textual Amendments

- F4** Sch. 3 para. 7 substituted by Water Act 1989 (c. 15, SIF 130), s. 141, Sch. 17 para. 7(1)(14)(a) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(3)(4), 57(6), 58)

#### Modifications etc. (not altering text)

- C1** Sch. 3 para. 7 modified by Water Act 1989 (c. 15, SIF 130), s. 190, Sch. 26 para. 40(3)(b) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

8 Before making an order the Minister shall consider any objections which may be duly made to the draft order, and may cause a public local inquiry to be held with respect to any such objections.

[<sup>F5</sup>9 A statutory instrument containing an order shall be subject to annulment in pursuance to a resolution of either House of Parliament; and, where a statutory instrument is laid before Parliament for the purposes of this paragraph, a copy of the

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report of any local inquiry held with respect to objections considered in connection with the making of the order contained in that instrument shall be so laid at the same time.]

**Textual Amendments**

**F5** Sch. 3 para. 9 substituted for paras. 9 (beginning “After an order”), 10, 11 by Water Act 1989 (c.15, SIF 130), ss. 141, 190, Sch. 17 para. 7(1)(14)(b), **Sch. 26 para. 40(3)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

<sup>F6</sup>12 . . . . .

**Textual Amendments**

**F6** Sch. 3 para. 12 repealed by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

- 13           Where—
- (a) any fishery, land or foreshore proposed to be comprised in an order; or
  - (b) any fishery proposed to be affected by any order; or
  - (c) any land over which it is proposed to acquire an easement under an order, belongs to Her Majesty in right of the Crown or forms part of the possessions of the Duchy of Lancaster or the Duchy of Cornwall, or belongs to or is under the management of any government department, the Minister may make the order if he has previously obtained—
    - (i) in the case of any foreshore under the management of the Crown Estate Commissioners, or of any fishery or land belonging to Her Majesty in right of the Crown, the consent of those Commissioners;
    - (ii) in the case of any foreshore or fishery or land forming part of the possessions of the Duchy of Lancaster, the consent of the Chancellor of the Duchy;
    - (iii) in the case of any foreshore, fishery or land forming part of the possessions of the Duchy of Cornwall, the consent of the Duke of Cornwall, or the persons for the time being empowered to dispose for any purpose of the land of the Duchy;
    - (iv) in the case of any foreshore or fishery or land which belongs to or is under the management of a government department, the consent of that government department.

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## PART II

### BYELAWS

#### *General*

- 14 Subject to Schedule 1 above, the power to make byelaws shall be exercisable by water authorities.
- 15 Byelaws may be made for any of the purposes mentioned in paragraphs 19 to 36 below.
- 16 A byelaw may be made to apply to <sup>F7</sup> . . . any part or parts of a water authority area or to the whole or any part or parts of the year.

#### **Textual Amendments**

- F7** Words repealed by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

- 17 If at any time before the end of 12 months after the confirmation of a byelaw made for the purpose specified in paragraph 21 or 25 below the owner or occupier of any fishery <sup>F8</sup> . . ., by notice in writing to the water authority, claims that the fishery is injuriously affected by the byelaw, the claim and the amount of compensation to be paid, by way of annual payment or otherwise, for the damage (if any) to the fishery shall be determined, in default of agreement, by a single arbitrator appointed by the Minister.

#### **Textual Amendments**

- F8** Words repealed by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

- 18 When the compensation is payable under any award by way of an annual payment, the water authority or the person entitled to the annual payment may at any time after the end of 5 years from the date of the award require it to be reviewed by a single arbitrator appointed by the Minister, and the compensation to be thenceforth paid shall be such, if any, as may be determined by that arbitrator.

#### *Purposes for which Byelaws may be made*

- 19 Fixing or altering, subject to paragraph 3 of Schedule 1 above, any such close season or close time as is mentioned in that paragraph.

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- 20 Dispensing with a close season for freshwater fish or rainbow trout.
- 21 Specifying the nets and other instruments (not being fixed engines) which may be used for taking salmon, trout, freshwater fish and eels and imposing requirements as to their construction, use, design, material and dimensions, including in the case of nets the size of mesh.
- [<sup>F9</sup>21A Authorising the placing and use of fixed engines at such places <sup>F10</sup> . . . (not [<sup>F11</sup>without the consent of the local fisheries committee in question] being places within the sea fisheries district of a local fisheries committee), at such times and in such manner as may be prescribed by the byelaws and imposing requirements as to the construction, design, material and dimensions of such engines, including in the case of nets the size of mesh.]

#### Textual Amendments

- F9** Sch. 3 para. 21A inserted (E.W. and as mentioned in the said s. 43(4) (border rivers)) by Salmon Act 1986 (c. 62, SIF 52:2), ss. 33(3), 43(4)
- F10** Words repealed by Water Act 1989 (c. 15, SIF 130), s. 190, Sch. 27 Pt. I (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)
- F11** Words inserted by Water Act 1989 (c. 15, SIF 130), ss. 141, 190, Sch. 17 para. 7(14)(c), Sch. 26 para. 40(3) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

- 22 Requiring and regulating the attachment to licensed nets and instruments of marks, labels or numbers, or the painting of marks or numbers or the affixing of labels or numbers to boats, coracles or other vessels used in fishing.
- 23 Prohibiting the carrying in any boat or vessel whilst being used in fishing for salmon or trout of any net which is not licensed, or which is without the mark, label or number prescribed by the byelaws.
- 24 Prohibiting or regulating the carrying in a boat or vessel during the annual close season for salmon of a net capable of taking salmon other than a net commonly used in the area to which the byelaw applies for sea fishing if carried in a boat or vessel commonly used for that purpose.
- 25 Prohibiting the use for taking salmon, trout, or freshwater fish of any instrument (not being a fixed engine) in such waters within the water authority area and at such times as may be prescribed by the byelaws.
- 26 Prohibiting the taking or removal from any water without lawful authority of any fish, whether alive or dead.

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- 27 Determining for the purposes of this Act the period of the year during which gratings need not be maintained.
- 28 Prohibiting or regulating the taking of trout or any freshwater fish of a size less than such as may be prescribed by the byelaw.
- 29 Prohibiting or regulating the taking of fish by any means within such distance as is specified in the byelaw above or below any dam or any other obstruction, whether artificial or natural.
- 30 Prohibiting or regulating fishing with rod and line between the end of the first hour after sunset on any day and the beginning of the last hour before sunrise on the following morning.
- 31 Regulating the deposit or discharge in any waters containing fish of any liquid or solid matter specified in the byelaw which is detrimental to salmon, trout or freshwater fish, or the spawn or food of fish, but not so as to prejudice any powers of a local authority to discharge sewage in pursuance of any power given by a public general Act, a local Act or a provisional order confirmed by Parliament.
- [<sup>F12</sup>32 Requiring persons to send to the National Rivers Authority returns, in such form, giving such particulars and at such times as may be specified in the byelaws, of the period or periods during which they have fished for salmon, trout, freshwater fish or eels, of whether they have taken any and, if they have, of what they have taken.]

#### Textual Amendments

**F12** Sch. 3 para. 32 substituted for para. 32 by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 141, 190, [Sch. 17 para. 7\(1\)\(14\)\(d\)](#), [Sch. 26 para. 40\(3\)](#) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), [Sch. 26 paras. 3\(1\)\(2\)](#), 17, 40(4), 57(6), 58)

- 33 Regulating the use in connection with fishing with rod and line of any lure or bait specified in the byelaw.
- 34 Determining the time during which it shall be lawful to use a gaff in connection with fishing with rod and line for salmon or migratory trout.
- 35 Authorising fishing with rod and line for eels during the annual close season for freshwater fish.

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- 36 The better execution of this Act and the better protection, preservation and improvement of any salmon fisheries, trout fisheries, freshwater fisheries and eel fisheries<sup>F13</sup> . . .

**Textual Amendments**

**F13** Words repealed by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190, [Sch. 27 Pt. I](#) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), [Sch. 26](#) paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

**PART III**

MISCELLANEOUS

- 37 Without prejudice to [<sup>F14</sup>section 145 of the Water Act 1989, the powers conferred on the National Rivers Authority by that section, by section 151 of that Act and by section 155 of that Act include power] to purchase or take on lease (either by agreement or if so authorised compulsorily)—
- (a) any dam, fishing weir, fishing mill dam, fixed engine or other artificial obstruction and any fishery attached to or worked in connection with any such obstruction;
  - (b) so much of the bank adjoining a dam as may be necessary for making or maintaining a fish pass for the purposes of section 10 above; and
  - (c) for the purpose of erecting and working a fixed engine under paragraph 1(b) above, any fishery land or foreshore specified in the relevant order under that paragraph together with any easement over any adjoining land necessary for securing access to the fishery land or foreshore so acquired.

**Textual Amendments**

**F14** Words substituted by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 141, 190, [Sch. 17](#) para. 7(1)(14)(e), [Sch. 26 para. 40\(3\)](#) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), [Sch. 26](#) paras. 3(1)(2), 17, 40(4), 57(6), 58)

- 38 Without prejudice to the said [<sup>F15</sup>section 145], a water authority may either alter or remove an obstruction acquired in the exercise of the powers mentioned in paragraph 37 above, or may by themselves or their lessees use or work in any lawful manner the obstruction for fishing purposes and exercise the right conferred by any fishery so acquired, subject in the case of an obstruction or fishery acquired by way of lease to the terms of the lease.

**Textual Amendments**

**F15** Words substituted by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 141, 190, [Sch. 17](#) para. 7(1)(14)(f), [Sch. 26 para. 40\(3\)](#) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), [Sch. 26](#) paras. 3(1)(2), 17, 40(4), 57(6), 58)

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- 39 (1) Without prejudice to the said [<sup>F16</sup>paragraph 2][<sup>F16</sup>section 145], a water authority—
- (a) may take legal proceedings in respect of any offence against this Act, or for the enforcement of the provision of this Act or for the protection of [<sup>F17</sup>the fisheries in their area][<sup>F17</sup>any fisheries] from injury by pollution or otherwise;
  - [<sup>F18</sup>(b) may purchase or lease by agreement any fishery, fishing rights, or any establishment for the artificial propagation or rearing of salmon, trout or freshwater fish, and may use, work or exercise the same by themselves, their lessees, or any person duly authorised by them in writing; and]
  - (c) may obtain the services of additional constables under section 15 of the <sup>M1</sup>Police Act 1964.
- (2) Nothing in this paragraph shall authorise anything to be done which may injuriously affect any navigable river, canal, or inland navigation.

#### Textual Amendments

- F16** Words “section 145” substituted for “paragraph 2” (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 141, 190, Sch. 17 para. 7(1)(14)(g)(i), **Sch. 26 para. 40(3)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F17** Words “any fisheries” substituted for “the fisheries in their area” (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 141, 190, Sch. 17 para. 7(1)(14)(g)(ii), **Sch. 26 para. 40(3)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F18** Sch. 3 para. 39(1)(b) repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190, Sch. 27 Pt. 1 (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**)

#### Modifications etc. (not altering text)

- C2** Sch. 3 para. 39(1)(a): by Salmon Act 1986 (c. 62, SIF 52:2), **ss. 32(6)(b)**, 43(4) it is provided that Sch. 3 para. 39(1)(a) is amended (E.W., and as mentioned in s. 43(4) (border rivers))

#### Marginal Citations

- M1** 1964 c. 48.



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