

MARINE AND COASTAL ACCESS ACT 2009

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

Schedule 16: Migratory and Freshwater Fish: Consequential Amendments

981. *Paragraph 2* omits section 3 of the Salmon and Freshwater Fisheries Act 1975, which regulates the use of nets in certain waters. Such use will be regulated by conditions issued as part of a licence or authorisation.
982. Section 5 of the Salmon and Freshwater Fisheries Act 1975 makes it an offence to use any explosive substance, any poison or other noxious substance, or any electrical device with the intent to take or destroy fish. The Environment Agency may permit their use for scientific or fisheries management purposes. *Paragraph 3(3)* clarifies that the Agency may charge for such permission. *Paragraph 3(4)* excludes activities that have been authorised under section 27A from the offence.
983. *Paragraphs 4 to 6* omit sections 6 to 8 and 16 and 17 of the Salmon and Freshwater Fisheries Act 1975. These sections place restrictions on the operation of fixed nets and traps. The Environment Agency will include relevant operating conditions within the conditions of licences and authorisations.
984. *Paragraph 7* removes a cross-reference to section 17 of the Salmon and Freshwater Fisheries Act 1975, which has been repealed.
985. *Paragraph 8* omits sections 19 to 21 of the Salmon and Freshwater Fisheries Act 1975. Section 19 contains offences in relation to close seasons and close times. Section 20 sets out requirements in relation to operation of fixed engines and obstructions during close seasons and close times, and section 21 sets out similar requirements in relation to eel baskets. Close seasons and close times will be regulated through licence conditions, authorisations and byelaws. Penalties for breaching byelaws are in section 211 of the Water Resources Act 1991.
986. *Paragraph 9* amends references to “instruments” in section 25 of the Salmon and Freshwater Fisheries Act 1975 to “means of fishing” to bring it in line with other amendments to that section. Section 25 extends the licensing system to means of fishing which are not “instruments”.
987. *Paragraph 11* amends section 27 of the Salmon and Freshwater Fisheries Act 1975 (unlicensed fishing) in consequence of new provisions on fishing authorisations (see section 213).
988. *Paragraph 12* amends section 33 of the Salmon and Freshwater Fisheries Act 1975 which enables enforcement officers to enter lands situated on or near to any waters where they suspect an offence under that Act is being committed or likely to be committed. Officers first need to apply to a justice of the peace. This power has been extended so that officers have the power when the offence has been committed in relation to any kind of fish.

*These notes refer to the Marine and Coastal Access Act 2009
(c.23) which received Royal Assent on 12th November 2009*

989. Section 34 of the Salmon and Freshwater Fisheries Act 1975 enables enforcement officers to seize without warrant any person who has illegally taken or killed salmon, trout, freshwater fish and eels, or is found on or near any waters with the intent so to do during night-time. *Paragraph 13* replaces references to particular species with any fish where the taking or killing constitutes an offence under that Act.
990. *Paragraph 15* omits Schedule 1 to the Salmon and Freshwater Fisheries Act 1975, which makes provision in relation to close times. These will be set in byelaws (see section 218).
991. *Paragraph 16* amends Schedule 2 to the Salmon and Freshwater Fisheries Act 1975. Under Schedule 2, the Environment Agency may, in special cases, exempt a person from paying a licence duty fixed under that Schedule. *Paragraph 16(2)* removes the requirement for special cases and allows the exemption in cases where the Agency considers it appropriate.
992. *Paragraph 16(3)* allows different licence duties to be charged for the different descriptions of licences the Environment Agency may introduce under section 217(2).
993. Amendments to section 25 of the Salmon and Freshwater Fisheries extend the licensing system to means of fishing which are not “instruments”. *Paragraph 16(4), (7), (8), (10), (11)* and *(12)* amends other references to “instruments” in Schedule 2 accordingly.
994. *Paragraph 16(9)* ensures that names may be removed from a licence as well as being entered.
995. *Paragraph 17* amends Schedule 4 to the Salmon and Freshwater Fisheries Act 1975. This Schedule sets out the penalties for offences under that Act. Paragraph 17 makes consequential amendments (including, in particular, the repeal of references to sections 19 and 21).
996. Those who operate fish farms are exempt from offences listed in Part 1 of Schedule 4 to the Fisheries Act 1981: for example, offences of killing unclean or immature fish, or killing fish during close seasons. *Paragraph 18* updates this list to ensure it makes correct reference to the (amended) offences under the Water Resources Act 1991.
997. *Paragraph 19* omits section 32(6)(a) of the Salmon Act 1986, which is redundant following amendments to section 31(1)(b) of the Salmon and Freshwater Fisheries Act 1975 made by section 220.
998. Amendments to Schedule 25 to the Water Resources Act 1991 extend the Environment Agency’s byelaw making powers to salmon, trout, lampreys, smelt, shad, eels, freshwater fish and other specified fish (by order under new section 40A of the Salmon and Freshwater Fisheries Act 1975). *Paragraphs 23* and *24* amend other references to fish species in Schedule 25 and section 218 accordingly.
999. *Paragraph 25* omits paragraph 7 of Schedule 25 to the 1991 Act. Paragraph 7(1) requires that when making byelaws within the district of a Sea Fisheries Committee the Environment Agency must seek its consent. Sea Fisheries Committees are to be replaced with Inshore Fisheries and Conservation Authorities; the relationship between the two jurisdictions will be managed administratively rather than through statutory limitations.
1000. Paragraph 7(2) prohibits the Environment Agency from making byelaws which would prejudice any powers of a sewerage undertaker to discharge sewage which is permitted under any other Act.
1001. *Paragraph 26* amends the references to fish made in section 13 of the Environment Act 1995, which requires the Environment Agency to create regional and local fisheries advisory committees.