



# Marine and Coastal Access Act 2009

## 2009 CHAPTER 23

### PART 7

#### FISHERIES

### CHAPTER 2

#### THE SEA FISHERIES (SHELLFISH) ACT 1967

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

- (1) Section 1 of the [Sea Fisheries \(Shellfish\) Act 1967 \(c. 83\)](#) (power to make orders as to fisheries for shellfish) is amended as set out in subsections (2) and (3).
- (2) In subsection (1), for the words from “shellfish” to “Minister” substitute “shellfish of any kind specified in the order”.
- (3) Omit subsection (4) (certain consents required for orders made in relation to land belonging to Crown etc).
- (4) In Schedule 1 to that Act (provisions with respect to making of orders under section 1), in paragraph 6—
  - (a) the existing provision is renumbered as sub-paragraph (1), and
  - (b) after that sub-paragraph insert—

“(2) Where the proposed order relates to any portion of the sea shore belonging to Her Majesty in right of the Crown, the appropriate Minister shall also have regard to the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961.”
- (5) In section 15 of the [Sea Fisheries Act 1968 \(c. 77\)](#) (which amended section 1 of the Sea Fisheries (Shellfish) Act 1967)—
  - (a) omit subsection (2);
  - (b) in subsection (3), for “that section” substitute “section 1 of that Act”.

---

*Status: This is the original version (as it was originally enacted).*

---

## **203 Variation etc of orders as a result of development**

In section 1 of the [Sea Fisheries \(Shellfish\) Act 1967](#) (power to make orders as to fisheries for shellfish), for subsection (6) substitute—

- “(6) Any order made under this section may be varied or revoked by a subsequent order made under this section.
- (7) Subject to subsection (8) below, subsections (1) to (5) above 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.
- (8) Subsection (7) above does not apply in the case of any order made by virtue of subsection (10) below.
- (9) Subsection (10) below applies in any case where it appears to the appropriate Minister that—
  - (a) permission has been granted for the carrying out of any development in, on or over any portion of the sea shore to which an order made under this section relates (the “affected area”), and
  - (b) as a result of the development, it will be impossible or impracticable to exercise any right of several fishery or of regulating a fishery conferred by the order in the affected area.
- (10) In any such case, the appropriate Minister may—
  - (a) vary the order so that the area to which the order relates no longer includes the affected area, or
  - (b) if the affected area comprises the whole or the greater part of the area to which the order relates, revoke the order.
- (11) The provision that may be made by an order made by virtue of subsection (10) above includes—
  - (a) provision requiring the owners of the affected area to pay compensation to any persons who, at the time of the making of the order, are entitled to a right of several fishery in any part of the affected area by virtue of an order under this section;
  - (b) provision for the amount of any such compensation to be specified in, or determined in accordance with provision made by, the order (including provision for or in connection with the appointment of a person to make any such determination).
- (12) Before making an order by virtue of subsection (10) above, the appropriate Minister must consult—
  - (a) any persons who are entitled to a right of several fishery or a right of regulating a fishery in any part of the affected area by virtue of an order under this section, and
  - (b) the owners or reputed owners, lessees or reputed lessees and occupiers, if any, of the affected area.
- (13) The appropriate Minister may require the owners of the affected area to provide him with such information relating to the development as he may reasonably require for the purpose of deciding whether to make an order by virtue of subsection (10) above.

- (14) In this section “development” has the same meaning as in the Town and Country Planning Act 1990.”

## **204 Purposes for which tolls etc may be applied**

- (1) Section 3 of the [Sea Fisheries \(Shellfish\) Act 1967 \(c. 83\)](#) (effect of grant of right of regulating a fishery) is amended as follows.
- (2) In subsection (1)(c), for “improving and cultivating” substitute “regulating”.
- (3) In subsection (2)—
  - (a) before “any such tolls” insert “, subject to subsection (2A) of this section,”;
  - (b) for “in the improvement and cultivation of” substitute “for purposes relating to the regulation of”.
- (4) After that subsection insert—

“(2A) An order under section 1 of this Act which—

  - (a) confers on the grantees a right of regulating a fishery, and
  - (b) imposes tolls or royalties upon persons dredging, fishing for and taking shellfish within the limits of the fishery, or of that part of the fishery within which the right is exercisable,

may provide that the grantees may, for the purposes of recouping any costs incurred by the grantees in connection with applying for the order, retain such portion of those tolls and royalties as may be specified in the order.”
- (5) In subsection (4), for “for the improvement and cultivation of” substitute “for purposes relating to the regulation of”.

## **205 Increase in penalties for certain offences relating to fisheries for shellfish**

- (1) The [Sea Fisheries \(Shellfish\) Act 1967 \(c. 83\)](#) is amended as follows.
- (2) In section 3(3) (offence of dredging, fishing for or taking shellfish in contravention of any restriction or regulation, etc.), for “level 5 on the standard scale” substitute “£50,000”.
- (3) In section 7(4) (offences in relation to certain fisheries), for “level 5 on the standard scale” substitute “£50,000”.

## **206 Liability of master, etc where vessel used in commission of offence**

- (1) In section 3 of the [Sea Fisheries \(Shellfish\) Act 1967](#) (effect of grant of right of regulating a fishery), after subsection (4) insert—

“(5) Where any sea fishing boat is used in the commission of an offence under subsection (3) of this section, the master, the owner and the charterer (if any) shall each be guilty of an offence and liable on summary conviction to a fine not exceeding £50,000.”
- (2) In section 22(2) of that Act (interpretation), after the definition of “land” insert—

““master” includes, in relation to any sea fishing boat, the person for the time being in command or charge of the boat;”.

---

*Status: This is the original version (as it was originally enacted).*

---

## **207 Restrictions imposed by grantees, etc**

In section 3 of the [Sea Fisheries \(Shellfish\) Act 1967](#) (effect of grant of right of regulating a fishery), after subsection (5) (inserted by section 206) insert—

“(6) Subsection (1) of this section applies where an order under section 1 of this Act—

- (a) confers on the grantees a right of regulating a fishery, and
- (b) by virtue of section 15(3) of the Sea Fisheries Act 1968, enables the grantees to impose restrictions on, or make regulations respecting, the dredging, fishing for and taking of shellfish within the limits of the regulated fishery or part,

as it applies where an order under section 1 of this Act confers such a right and imposes such restrictions or makes such regulations.

(7) Accordingly, any reference in this section to restrictions or regulations is to be read as including a reference to any restrictions imposed by, or any regulations made by, the grantees.”

## **208 Cancellation of licence after single relevant conviction**

In section 4(7) of the [Sea Fisheries \(Shellfish\) Act 1967](#) (which enables a licence granted in respect of a regulated fishery to be cancelled if the holder is convicted of two relevant offences)—

- (a) for “, having been convicted” substitute “is convicted”;
- (b) omit “, is subsequently convicted of another such offence”.

## **209 Register of licences**

After section 4 of the [Sea Fisheries \(Shellfish\) Act 1967 \(c. 83\)](#) (licensing powers in case of regulated fishery) insert—

### **“4ZA Register of licences**

- (1) This section applies where the grantees of an order to which section 4 of this Act applies issue one or more licences in pursuance of the order.
- (2) The grantees shall establish and maintain a register containing the names and addresses of all persons who for the time being hold licences issued by the grantees.
- (3) The register shall be available for inspection free of charge by any person at such place or places, and during such hours, as are determined by the grantees.
- (4) The grantees shall make arrangements for the provision of a copy of an entry in the register to any person on request.
- (5) The arrangements that may be made under subsection (4) of this section include arrangements for the payment of a reasonable fee by the person making the request.”

## **210 Protection of private shellfish beds**

- (1) Section 7 of the [Sea Fisheries \(Shellfish\) Act 1967](#) (protection of fisheries) is amended as follows.
- (2) In subsection (1)(b), for “private oyster bed” substitute “private shellfish bed”.
- (3) In subsections (2) and (3)—
  - (a) for “oysters” substitute “relevant shellfish”;
  - (b) for “private oyster bed” substitute “private shellfish bed”.
- (4) In subsections (4) and (5)(b), for “private oyster bed” substitute “private shellfish bed”.
- (5) For subsection (6) substitute—

“(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;  
“relevant shellfish”, in relation to a private shellfish bed, means the shellfish in respect of which the owner of the bed has private rights independently of this Act.”

## **211 Use of implements of fishing**

- (1) Section 7 of the [Sea Fisheries \(Shellfish\) Act 1967](#) (protection of fisheries) is amended as follows.
- (2) In subsection (4), at the end of paragraph (a)(ii) insert “or  
(iii) in the case of several fishery, an implement of a type specified by or under the order and so used as not to disturb or injure in any manner shellfish of the description in question or any bed for such shellfish or the fishery for such shellfish;”.
- (3) After subsection (4) insert—

“(4A) The power to specify a type of implement for the purposes of subsection (4)(a)(iii) of this section includes power to specify—  
(a) periods during which implements of that type may or may not be used;  
(b) parts of the area of the fishery with respect to which the right of several fishery is conferred in which implements of that type may or may not be used.

The exception in subsection (4)(a)(iii) of this section does not apply in a case of a person who uses an implement otherwise than in accordance with provision made by virtue of this subsection.”

## **212 Taking of crabs and lobsters for scientific purposes**

- (1) Section 17 of the [Sea Fisheries \(Shellfish\) Act 1967 \(c. 83\)](#) (taking and sale of certain crabs and lobsters prohibited) is amended as follows.
- (2) In subsection (1), for “subsection (2)” substitute “subsections (2) and (2A)”.
- (3) After subsection (2) insert—

---

*Status: This is the original version (as it was originally enacted).*

---

“(2A) Any person who takes or has in his possession any edible crab falling within paragraph (a) or (b) of subsection (1) of this section shall not be guilty of an offence under that subsection if—

- (a) the crabs were taken from that part of the sea that is within British fishery limits and does not include the Scottish zone or the Northern Ireland zone,
- (b) the person has been granted authority by the appropriate body to take such crabs for the purpose of scientific investigation, and
- (c) the crabs were taken for that purpose and in accordance with such authority.”

(4) In subsection (3), for “and any person” substitute “and, subject to subsection (3B) of this section, any person”.

(5) Before subsection (4) insert—

“(3B) Any person who lands any lobster falling within subsection (3) of this section shall not be guilty of an offence under that subsection if—

- (a) the lobsters were taken from that part of the sea that is within British fishery limits and does not include the Scottish zone or the Northern Ireland zone,
- (b) the person has been granted authority by the appropriate body to take such lobsters for the purpose of scientific investigation, and
- (c) the lobsters were taken for that purpose and in accordance with such authority.”

(6) After subsection (5) insert—

“(6) In this section—

“the appropriate body” means—

- (a) the Marine Management Organisation, in the case of crabs and lobsters taken from that part of the sea that is within British fishery limits and does not include—
  - (i) the Scottish zone,
  - (ii) the Northern Ireland zone, or
  - (iii) the Welsh zone;
- (b) the Welsh Ministers, in the case of crabs and lobsters taken from the Welsh zone;

“British fishery limits” has the meaning given by section 1 of the Fishery Limits Act 1976;

“Northern Ireland zone” has the same meaning as in the Northern Ireland Act 1998;

“Welsh zone” has the same meaning as in the Government of Wales Act 2006.”

## **213 Orders prohibiting the taking and sale of certain lobsters**

- (1) Section 17 of the [Sea Fisheries \(Shellfish\) Act 1967 \(c. 83\)](#) (taking and sale of certain crabs and lobsters prohibited) is amended as set out in subsections (2) and (3) below.

- (2) In subsection (3) (orders prohibiting the taking and sale of certain lobsters), for the words from “If the Minister” to “England and Wales,” substitute “If the appropriate national authority by order so directs, no person shall, in the part of the United Kingdom to which the order relates,”.
- (3) For subsection (3A) substitute—
  - “(3ZA) In subsection (3) of this section “the appropriate national authority” means—
  - (a) in relation to England, the Secretary of State;
  - (b) in relation to Wales, the Welsh Ministers;
  - (c) in relation to Scotland, the Scottish Ministers.”
- (4) In section 20(3) of that Act (procedure for orders made under section 17(3)), for the words from “shall be laid before Parliament” to the end substitute “shall—
- (a) in the case of an order in relation to England, be laid before Parliament;
- (b) in the case of an order in relation to Wales, be laid before the National Assembly for Wales;
- (c) in the case of an order in relation to Scotland, be laid before the Scottish Parliament.”

## **214 Power to appoint inspector before making orders as to fisheries for shellfish**

- (1) Schedule 1 to the [Sea Fisheries \(Shellfish\) Act 1967](#) (provisions with respect to making of orders under section 1) is amended as follows.
- (2) In paragraph 4 (appointment of inspector)—
  - (a) omit sub-paragraph (1);
  - (b) in sub-paragraph (2), for “The appropriate Minister shall” substitute “Where he considers it appropriate to do so, the appropriate Minister may”.
- (3) Omit paragraph 5.
- (4) In paragraph 6, after “in paragraph 3 above or” insert “, in a case where an inspector has been appointed under paragraph 4 above,”.
- (5) The amendments made by this section do not apply in relation to any application made for an order under section 1 of that Act before the coming into force of this section.