

EXPLANATORY MEMORANDUM TO
THE LICENSABLE MEANS OF FISHING ORDER 2010
2010 No. 2910

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 This instrument sets out which fisheries should be subject to an Environment Agency licence; those who wish to fish by a method for which a licence is not available will need to apply to the Environment Agency for an authorisation.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

4. **Legislative Context**

4.1 Section 25(1A)(c) of the Salmon and Freshwater Fisheries Act 1975, which was inserted by section 217 of the Marine and Coastal Access Act 2009, gives powers to Ministers to specify fishing methods for which licences should be available.

5. **Territorial Extent and Application**

5.1 This instrument applies in England and Wales, but does not apply in that part of the River Tweed and its catchment areas that lies in England. This area is, instead, managed by Scotland under the Scotland Act 1998 (River Tweed) Order 2006. Nor does it apply in that part of the Upper Esk, as defined by the Scotland Act 1998(Borders Rivers) Order 1999 that lies in England. This area is managed through that Order.

6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. **Policy background**

• *What is being done and why*

7.1 Under the Salmon and Freshwater Fisheries Act 1975 it is an offence to fish for migratory or freshwater fish without a licence in inland waters (and out to 6nm for migratory species) in England, Wales, and the Scottish Border Esk and its Scottish tributaries. The Environment Agency is obliged to issue licences to all who apply, subject to any Net Limitation Orders or court issued disqualification orders, but some fisheries can seriously impact stocks or the aquatic environment and should be subject to tighter controls.

The Marine and Coastal Access Act 2009 amended the 1975 Act by giving powers to Ministers to specify means of fishing for which licences should be available. Certain methods of fishing are specified by the legislation as automatically being included in

licensing schemes. These are fishing by rod and line, and fishing using an historic installation. Those who wish to fish by a method for which a licence is not available will need to apply to the Environment Agency for an authorisation. The Environment Agency will assess the fishery and should the potential impact on stocks or the aquatic or marine environments be at a significant level then the Environment Agency will be able to refuse to grant an authorisation. Those fisheries which pose a higher risk to stocks or the aquatic environment will therefore be subject to stronger scrutiny before they may be pursued.

This will ensure that, not only will the fisheries be assessed before any fishing takes place, but the Environment Agency will be able to quickly rescind an authorisation should either the state of the fishery or the aquatic environment so warrant. This will be of particular use in the Environment Agency's work in ensuring, for example, that eel fisheries are more closely examined, or if becomes apparent during the season that that year's eel restocking target is not being met.

- **Consolidation**

7.2 None.

8. Consultation outcome

8.1 A public consultation on the list of fisheries for which a licence should be available was held between 12 November 2009 and 5 February 2010. 26 responses were received, of which 17 were fishers. The majority of respondents (58%) supported the government's preferred option. Those who supported retention of the *status quo* argued that the state of eel stocks did not justify introducing a new authorisation system.

9. Guidance

9.1 No guidance will be produced.

10. Impact

10.1 The measures will affect approximately 860 fishers, and will cost them some £5,500 to £6,000 in total *per annum*. This is made up of the administrative burden to fishers (the time to complete the application form will raise from 10 to 15 minutes), and the fees for an authorisation. The fees will have to be increased from those currently charged for a licence in order to cover the increased costs of the Environment Agency in assessing the effect a particular method may have on a site or stock. They will fit within the wider unified charging system used by the Environment Agency which is risk based. At this stage we consider that the affected fishers will see a 6 – 7% increase in fees. The Environment Agency will publish its proposed charges for authorizations in 2010.

10.2 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small businesses. All fishers who target salmon, sea trout or eels using nets and traps are in effect small firms, and thus all of the costs and benefits identified are relevant to these fishers. No separate costs or benefits have been identified due to their size.

12. Monitoring & review

12.1 The appropriateness of an authorisation as opposed to a licence for each fishery will be kept under on-going review; ministers have the power to amend the requirement for a licence to an authorisation should concerns develop about a fishery. Conversely, the requirement for an authorisation can be changed to a licence should it be demonstrated that a fishery presents little threat to the environment or to stocks. In addition to this on-going review, the Government will hold a review five years after the implementation of this Order to consider to what degree these measures have been successful. The review will also assess the ease of process; i.e. how efficient the Environment Agency's process is for issuing licences and authorisations and how easy or difficult it is for fishers to apply.

13. Contact

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