



# Marine and Coastal Access Act 2009

## 2009 CHAPTER 23

### PART 7

#### FISHERIES

#### CHAPTER 1

##### THE SEA FISH (CONSERVATION) ACT 1967

#### 194 Size limits for sea fish

- (1) Section 1 of the Sea Fish (Conservation) Act 1967 (c. 84) (size limits, etc for fish) is amended as follows.
- (2) In subsection (1), for the words from “, being a fish” to “prescribed” substitute “ which does not meet such requirements as to size as may be prescribed ”.
- (3) In subsection (2), for the words from “, being a fish” to “prescribed” substitute “ which does not meet such requirements as to size as may be prescribed ”.
- (4) For subsection (3) substitute—
  - “(3) Sea fish of any description which do not meet the requirements as to size prescribed in relation to sea fish of that description by an order of the appropriate national authority shall not be carried, whether within or outside relevant British fishery limits, on a relevant British vessel; and an order under this subsection may prohibit the carrying by a Scottish or Northern Ireland fishing boat or a foreign vessel in waters to which subsection (3A) applies of sea fish of any description prescribed by the order which do not meet the requirements as to size so prescribed in relation to sea fish of that description.
  - (3A) This subsection applies to the sea within British fishery limits, other than the Scottish zone and the Northern Ireland zone.

*Status: Point in time view as at 01/04/2013.*

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“Northern Ireland zone” has the meaning given by the Northern Ireland Act 1998 (see section 98 of that Act).”

(5) For subsection (9) substitute—

“(9) In this section—

“the appropriate national authority” means—

- (a) in relation to Wales (within the meaning of the Government of Wales Act 2006), the Welsh Ministers;
- (b) in any other case, the Secretary of State;

“foreign vessel” means any vessel other than a relevant British vessel, a Scottish fishing boat or a Northern Ireland fishing boat;

“Northern Ireland fishing boat” means a fishing boat which is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Northern Ireland as the port to which the boat is to be treated as belonging;

“relevant British vessel” means a vessel, other than a Scottish fishing boat or a Northern Ireland fishing boat, which—

- (a) is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995, or
- (b) is owned wholly by persons qualified to own British ships for the purposes of that Part of that Act.”

#### Commencement Information

**I1** S. 194 partly in force; s. 194 in force for specified purposes at Royal Assent see s. 324(1)(c)

**I2** S. 194 in force at 12.1.2010 in so far as not already in force by S.I. 2009/3345, art. 2, Sch. para. 8

## 195 Regulation of nets and other fishing gear

(1) Section 3 of the Sea Fish (Conservation) Act 1967 (c. 84) (regulation of nets and other fishing gear) is amended as follows.

(2) After subsection (2) insert—

“(2A) An order under this section may be made by the appropriate national authority so as to extend to nets or other fishing gear used by any person, otherwise than from a fishing boat, for fishing for or taking sea fish in the sea within the seaward limits of the territorial sea adjacent to England and Wales.

(2B) In subsection (2A) above “the appropriate national authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers.”

(3) After subsection (5) insert—

“(5A) A person who contravenes an order made under this section by virtue of subsection (2A) above shall be guilty of an offence under this section.”

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#### Commencement Information

- I3** S. 195 partly in force; s. 195 in force for specified purposes at Royal Assent see s. 324(1)(c)  
**I4** S. 195 in force at 12.1.2010 in so far as not already in force by S.I. 2009/3345, art. 2, Sch. para. 8

### 196 Charging for commercial fishing licences

- (1) In section 4 of the Sea Fish (Conservation) Act 1967 (licensing of fishing boats) after subsection (4) (power to authorise charges for licences) insert—

“(4A) The provision that may be made in an order by virtue of subsection (4) above includes—

- (a) provision for the amount of any charge to be specified in, or determined in accordance with provision made by, the order;
- (b) different provision in relation to different classes of licence;
- (c) provision for no charge to be payable in such circumstances as may be specified in the order.”

- (2) In section 22 of that Act (interpretation) after subsection (3) insert—

“(3A) Any reference in this Act to a class is a reference to a class defined or described by reference to any circumstances whatsoever (whether or not relating to fishing or vessels).”

#### Commencement Information

- I5** S. 196 partly in force; s. 196 in force for specified purposes at Royal Assent see s. 324(1)(c)  
**I6** S. 196 in force at 12.1.2010 in so far as not already in force by S.I. 2009/3345, art. 2, Sch. para. 8

### 197 Grant of licences subject to conditions imposed for environmental purposes

In section 4 of the Sea Fish (Conservation) Act 1967 (licensing of fishing boats) after subsection (6) (power to grant licences subject to conditions) insert—

“(6ZA) The conditions subject to which a licence may be granted under this section include conditions imposed for the purposes of—

- (a) conserving or enhancing the natural beauty or amenity of marine or coastal areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas; or
- (b) conserving flora or fauna which are dependent on, or associated with, a marine or coastal environment.”

#### Commencement Information

- I7** S. 197 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 8

### 198 Power to restrict fishing for sea fish

- (1) Section 5 of the Sea Fish (Conservation) Act 1967 (c. 84) (power to restrict fishing for sea fish) is amended as follows.

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(2) For subsection (1) substitute—

- “(1) Subject to the provisions of this section, the appropriate national authority may make an order—
- (a) prohibiting, in any area specified in the order and either for a period so specified or without limitation of time—
    - (i) all fishing for sea fish;
    - (ii) fishing for any description of sea fish specified in the order;
    - (iii) fishing for sea fish, or for any description of sea fish specified in the order, by any method so specified;
  - (b) restricting, in any area specified in the order and either for a period so specified or without limitation of time, the amount of sea fish, or sea fish of a description specified in the order, that may, in any period so specified, be taken by—
    - (i) any person;
    - (ii) any fishing boat.

A person who contravenes any prohibition or restriction imposed by an order under this section shall be guilty of an offence under this subsection.

(1A) Where any fishing boat is used in contravention of any prohibition or restriction imposed by an order under this section, the master, the owner and the charterer (if any) shall each be guilty of an offence under subsection (1) above.

(1B) An order under this section which prohibits in any area—

- (a) fishing for sea fish, or for any description of sea fish specified in the order, or
- (b) fishing for sea fish, or for any description of sea fish specified in the order, by any method so specified,

may provide that any fishing gear, or any fishing gear of a description specified in the order, of any fishing boat in that area must be stowed in accordance with provision made by the order.

(1C) An order under this section restricting the amount of sea fish of any description that may be caught in a period specified in the order may provide that, for the purposes of paragraph (b) of subsection (1) above, any sea fish of that description that, after being caught in that period, is returned to the sea as soon as that amount is exceeded is not to be treated as having been caught in contravention of the restriction imposed by the order.”

(3) For subsection (8) substitute—

- “(8) The only provision that may be made by an order under this section in relation to an area outside British fishery limits, or an area within the Scottish zone or the Northern Ireland zone, is provision applying to—
- (a) a British fishing boat, other than a Scottish fishing boat or a Northern Ireland fishing boat, that is registered in the United Kingdom; or
  - (b) in so far as the order relates to fishing for salmon or migratory trout, a fishing boat which is British-owned but not registered under the Merchant Shipping Act 1995.

(9) In this section—

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“the appropriate national authority” means—

- (a) in relation to Wales (within the meaning of the Government of Wales Act 2006), the Welsh Ministers;
- (b) in any other case, the Secretary of State;

“Northern Ireland fishing boat” means a fishing boat which is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Northern Ireland as the port to which the boat is to be treated as belonging;

“Northern Ireland zone” has the meaning given by the Northern Ireland Act 1998 (see section 98 of that Act).”

#### Commencement Information

- 18** S. 198 partly in force; s. 198 in force for specified purposes at Royal Assent see s. 324(1)(c)
- 19** S. 198 in force at 12.1.2010 in so far as not already in force by S.I. 2009/3345, art. 2, Sch. para. 8

## 199 Penalties for offences

- (1) The Sea Fish (Conservation) Act 1967 (c. 84) is amended as follows.
- (2) In section 11 (penalties for offences), in subsection (1)(a)—
  - (a) for “section 4(3) or (6)” substitute “ section 1, 2, 3, 4(3), (6) or (9A) ”;
  - (b) for “5(1) or 6(5A)(a)” substitute “ 5(1) or (6) or 6(5) or (5A) ”.
- (3) In section 15 (powers of British sea-fishery officers for enforcement of that Act)—
  - (a) in subsection (2C) (penalties for certain offences) omit paragraph (b) and the “or” preceding it;
  - (b) after that subsection insert—
    - “(2D) Any person who assaults an officer who is exercising any of the powers conferred on him by subsection (2A) or (2B) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding £50,000.
    - (2E) Any person who wilfully obstructs an officer in the exercise of any of the powers conferred on him by subsection (2A) or (2B) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding £20,000.”
- (4) In section 16 (enforcement of orders under sections 1 and 2 of that Act), for subsection (1A) (penalties for certain offences) substitute—
  - “(1A) Any person who assaults an officer who is exercising any of the powers conferred on him by subsection (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding £50,000.
  - (1B) Any person who wilfully obstructs an officer in the exercise of any of the powers conferred on him by subsection (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding £20,000.”

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#### Commencement Information

**I10** S. 199 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 8

## 200 Offences by directors, partners, etc

In the Sea Fish (Conservation) Act 1967 (c. 84), for section 12 (offences committed by bodies corporate) substitute—

### “12 Offences by directors, partners, etc

- (1) Where a relevant offence has been committed by a body corporate and it is proved that the offence—
  - (a) has been committed with the consent or connivance of a person falling within subsection (2), or
  - (b) is attributable to any neglect on the part of such a person,
 that person (as well as the body corporate) is guilty of that offence and liable to be proceeded against and punished accordingly.
- (2) The persons are—
  - (a) a director, manager, secretary or similar officer of the body corporate;
  - (b) any person who was purporting to act in such a capacity.
- (3) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member, in connection with that management, as if the member were a director of the body corporate.
- (4) Where a relevant offence has been committed by a Scottish firm and it is proved that the offence—
  - (a) has been committed with the consent or connivance of a partner of the firm or a person purporting to act as such a partner, or
  - (b) is attributable to any neglect on the part of such a person,
 that person (as well as the firm) is guilty of that offence and liable to be proceeded against and punished accordingly.
- (5) In this section “relevant offence” means an offence under any provision of sections 1 to 6 of this Act.”

#### Commencement Information

**I11** S. 200 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 8

## 201 Minor and consequential amendments

Schedule 15 contains minor and consequential amendments relating to this Chapter.

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#### Commencement Information

**I12** S. 201 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 8

## 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 ”.

#### Commencement Information

**I13** S. 202 partly in force; s. 202 in force for specified purposes at Royal Assent see s. 324(1)(c)

**I14** S. 202 in force at 12.1.2010 in so far as not already in force by S.I. 2009/3345, art. 2, Sch. para. 9

#### 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.

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- (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.”

#### **Commencement Information**

**I15** S. 203 partly in force; s. 203 in force for specified purposes at Royal Assent see s. 324(1)(c)

**I16** S. 203 in force at 12.1.2010 in so far as not already in force by S.I. 2009/3345, art. 2, Sch. para. 9



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## 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 ”.

### Commencement Information

**I17** S. 204 partly in force; s. 204 in force for specified purposes at Royal Assent see s. 324(1)(c)

**I18** S. 204 in force at 12.1.2010 in so far as not already in force by S.I. 2009/3345, art. 2, Sch. para. 9

## 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 ”.

### Commencement Information

**I19** S. 205 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 9 (with art. 3(1))

## 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)

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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;”.

#### Commencement Information

**I20** S. 206 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 9 (with art. 3(2))

### 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.”

#### Commencement Information

**I21** S. 207 partly in force; s. 207 in force for specified purposes at Royal Assent see s. 324(1)(c)

**I22** S. 207 in force at 12.1.2010 in so far as not already in force by S.I. 2009/3345, art. 2, Sch. para. 9

### 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”.

#### Commencement Information

**I23** S. 208 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 9

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## 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.”

### Commencement Information

I24 S. 209 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 9

## 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.”

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#### **Commencement Information**

**I25** S. 210 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 9

### **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.”

#### **Commencement Information**

**I26** S. 211 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 9

### **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—

“(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.”

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(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.”

#### Commencement Information

I27 S. 212 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 9

### 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—

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: Marine and Coastal Access Act 2009, Part 7 is up to date with all changes known to be in force on or before 22 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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.”

#### Commencement Information

**I28** S. 213 partly in force; s. 213 in force for specified purposes at Royal Assent see s. 324(1)(c)

**I29** S. 213 in force at 12.1.2010 in so far as not already in force by S.I. 2009/3345, art. 2, Sch. para. 9

### 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.

#### Commencement Information

**I30** S. 214 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 9

## CHAPTER 3

### MIGRATORY AND FRESHWATER FISH

#### *Taking fish etc*

### 215 Prohibited implements

- (1) In the Salmon and Freshwater Fisheries Act 1975 (c. 51), section 1 (prohibited implements) is amended as follows.

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: Marine and Coastal Access Act 2009, Part 7 is up to date with all changes known to be in force on or before 22 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) In subsection (1), in paragraph (a)—
  - (a) in sub-paragraph (iv) after “gaff,” insert “ tailer, ”;
  - (b) for “salmon, trout or freshwater fish” substitute “ salmon, trout, eels, lampreys, smelt, shad, freshwater fish and any specified fish in any waters ”.
- (3) In that subsection, in paragraph (b), for “salmon, trout or freshwater fish” substitute “ any such fish in any waters ”.
- (4) In that subsection, in paragraph (c), for “any salmon, trout or freshwater fish” substitute “ any such fish in any waters ”.
- (5) After that subsection insert—
  - “(1A) In this section “specified fish” means fish of such description as may be specified for the purposes of this section by order under section 40A below.
  - (1B) The appropriate national authority may by order amend subsection (1)(a) above so as to—
    - (a) add any instrument to it; or
    - (b) remove any instrument for the time being specified in it.”
- (6) After subsection (3) insert—
  - “(3A) References in this section to any waters include waters adjoining the coast of England and Wales to a distance of six nautical miles measured from the baselines from which the breadth of the territorial sea is measured.”
- (7) The following are omitted—
  - (a) in subsection (1), the words “Subject to subsection (4) below,”;
  - (b) subsection (4).

#### **Commencement Information**

**I31** S. 215 partly in force; s. 215 in force for specified purposes at Royal Assent see s. 324(1)(c)

**I32** S. 215 in force at 12.1.2010 in so far as not already in force by S.I. 2009/3345, art. 2, **Sch. para. 10**

## **216 Roe etc**

- (1) Section 2 of the Salmon and Freshwater Fisheries Act 1975 (c. 51) (roe, spawning and unclean fish, etc) is amended as follows.
- (2) In subsection (1)—
  - (a) for “salmon, trout or freshwater fish” substitute “ salmon, trout, eels, lampreys, smelt, shad, freshwater fish or any specified fish in any waters ”;
  - (b) in paragraph (b), for “any roe of salmon or trout” substitute “ any fish roe ”.
- (3) In subsection (2)—
  - (a) after “subsections (3)” insert “ , (3A) ”;
  - (b) in paragraph (a), for “salmon, trout or freshwater fish” substitute “ salmon, trout, lamprey, smelt, shad, freshwater fish or specified fish in any waters ”;
  - (c) in paragraph (b), for “any salmon, trout or freshwater fish” substitute “ any such fish ”.

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: Marine and Coastal Access Act 2009, Part 7 is up to date with all changes known to be in force on or before 22 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) After subsection (3) insert—

“(3A) Subsection (2) above does not apply where a person takes an immature freshwater fish in circumstances prescribed by byelaws.”

(5) In subsection (5), for “salmon, trout or freshwater fish” substitute “ fish of any description ”.

(6) After that subsection insert—

“(6) In this section “specified fish” means fish of such description as may be specified for the purposes of this section by order under section 40A below.

(7) Subsection (3A) of section 1 above applies for the purposes of this section.”

#### Commencement Information

**I33** S. 216 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 10

## 217 Licences to fish

(1) In section 25 of the Salmon and Freshwater Fisheries Act 1975 (licences to fish), for subsection (1) substitute—

“(1) The Agency shall by means of a system of licensing regulate fishing by licensable means of fishing for—

- (a) salmon, trout, eels, lampreys, smelt and freshwater fish; and
- (b) fish of such other description as may be specified for the purposes of this section by order under section 40A below.

(1A) In this Act “licensable means of fishing” means any of the following—

- (a) rod and line;
- (b) an historic installation;
- (c) such other means of fishing as the appropriate national authority may by order specify.

(1B) In this Act “historic installation” means any of the following—

- (a) a fixed engine certified in pursuance of the Salmon Fishery Act 1865 to be a privileged fixed engine;
- (b) a fixed engine which was in use for taking salmon or migratory trout during the open season of 1861, in pursuance of an ancient right or mode of fishing as lawfully exercised during that open season, by virtue of any grant or charter or immemorial usage;
- (c) a fishing weir or fishing mill dam which was lawfully in use on 6th August 1861 by virtue of a grant or charter or immemorial usage.”

(2) In that section, in subsection (2), after “area or areas” insert “ (or in waters of such description or descriptions) ”.

(3) In that section, in subsection (4), the words from “gaff” to “tailer or” are omitted.

(4) In that section, subsections (5) and (6) are omitted.

(5) In that section, at the end insert—



*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: Marine and Coastal Access Act 2009, Part 7 is up to date with all changes known to be in force on or before 22 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

“(10) For the purposes of this Part, the Agency may permit a person to take fish of any description in circumstances where he would for those purposes otherwise require a fishing licence.

(11) Permission under subsection (10) above—

- (a) must be in writing;
- (b) may be given generally or specifically;
- (c) may be given subject to conditions.”

(6) In Schedule 2 to that Act (licences)—

- (a) in paragraph 11, the words from “together” to the end are omitted;
- (b) paragraph 12 is omitted.

(7) In that Schedule, after paragraph 14 insert—

#### “**Historic installations**

14A (1) Where a fishing licence is granted in respect of an historic installation, the Agency may at any time, subject to this paragraph, impose conditions on its use pursuant to the licence.

(2) Conditions under sub-paragraph (1) above are to be imposed by notice in writing to the person holding the licence.

(3) A notice under sub-paragraph (1) above may be varied or revoked by a further such notice.

(4) The Agency may only impose conditions under sub-paragraph (1) above where it considers that it is necessary to do so for the protection of any fishery.”

#### **Commencement Information**

**I34** S. 217 partly in force; s. 217 in force for specified purposes at Royal Assent see s. 324(1)(c)

**I35** S. 217(1) in force at 12.1.2010 for specified purposes by [S.I. 2009/3345, art. 2, Sch. para. 11](#)

**I36** S. 217(1) in force at 1.1.2011 in so far as not already in force by [S.I. 2010/298, art. 2, Sch. para. 13](#)

**I37** S. 217(2)(5)-(7) in force at 1.1.2011 in so far as not already in force by [S.I. 2010/298, art. 2, Sch. para. 13](#)

**I38** S. 217(3)(4) in force at 12.1.2010 in so far as not already in force by [S.I. 2009/3345, art. 2, Sch. para. 11](#)

#### **218 Limitation of licences**

(1) Section 26 of the Salmon and Freshwater Fisheries Act 1975 (c. 51) (limitation of fishing licences) is amended as follows.

(2) In subsection (1)—

- (a) at the beginning insert “ Subject to this section ”;
- (b) in paragraph (a), for the words from “to be issued” to “rod and line” substitute “ of any description to be issued pursuant to section 25 above in any year in relation to that area or those areas ”.

(3) After that subsection insert—

*Status: Point in time view as at 01/04/2013.*

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“(1A) The Agency may only make an order under subsection (1) above in relation to licences for fishing for fish of any description if it is satisfied that it is necessary to do so for the purposes of—

- (a) maintaining, improving or developing fisheries of any fish referred to in section 25(1) above; or
- (b) protecting the marine or aquatic environment from significant harm.

(1B) The Agency may not make an order under subsection (1) above in relation to licences for fishing for fish by—

- (a) rod and line; or
- (b) an historic installation.”

(4) In subsection (3), for “shall cause” substitute “ may cause ”.

(5) For subsections (4) and (5) substitute—

“(4) If it appears to the Agency that an order under this section would prevent a person from fishing in circumstances where that person is wholly dependent on the fishing for his livelihood, the Agency may pay that person such amount by way of compensation as it considers appropriate.”

#### Commencement Information

**I39** S. 218 partly in force; s. 218 in force for specified purposes at Royal Assent see s. 324(1)(c)

**I40** S. 218 in force at 1.1.2011 in so far as not already in force by S.I. 2010/298, art. 2, Sch. para. 13

## 219 Authorisation to fish

(1) In the Salmon and Freshwater Fisheries Act 1975 (c. 51), in the heading to Part 4, after “Fishing licences” insert “ and authorisations ”.

(2) After section 27 of that Act insert—

### “27A Authorisation of fishing otherwise than by licensable means

(1) The Agency may authorise a person to use any means, other than a licensable means of fishing, to fish for—

- (a) salmon, trout, eels, lampreys, smelt and freshwater fish; and
- (b) fish of such other description as may be specified for the purposes of this section by order under section 40A below.

(2) An application for an authorisation under this section must be in such form as the Agency may specify.

(3) An authorisation under this section must be in writing, but subject to that may be in such form as the Agency may determine.

(4) An authorisation under this section—

- (a) must be granted for a specified period of time;
- (b) may be granted to more than one person;
- (c) may be limited as to the waters in respect of which it is granted;
- (d) may be subject to conditions.

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*Status: Point in time view as at 01/04/2013.*

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- (5) The Agency may at any time, on application or on its own initiative—
- (a) amend an authorisation under this section;
  - (b) revoke an authorisation under this section.
- (6) In determining whether to grant, amend or revoke an authorisation the Agency must consider the effect of doing so on—
- (a) fisheries in the area to which the authorisation relates; and
  - (b) the aquatic or marine environment in that area.
- (7) An authorisation under this section granted to a body corporate—
- (a) may, if the authorisation so specifies, apply in relation to any individual acting on behalf of that body (as well as to the body corporate); or
  - (b) may, if the authorisation so specifies, apply only in relation to individuals named in the authorisation when acting on behalf of the body (as well as to the body corporate).
- (8) The Agency may charge a fee for the grant of an authorisation under this section.
- (9) Where the Agency determines standard fees for the grant of authorisations of particular descriptions, it must publish them.
- (10) Where—
- (a) the Agency has determined a standard fee for the grant of an authorisation of a particular description, but
  - (b) the Agency considers, in any case, that special circumstances apply to the grant of an authorisation of that description,
- it may charge a fee of another amount.

### **27B Unauthorised fishing etc**

- (1) A person is guilty of an offence if, by any means other than a licensable means of fishing, he fishes for or takes any fish in circumstances where—
- (a) the fishing or taking may be authorised under section 27A above, but
  - (b) he is not authorised to fish for or take the fish under that section (or is so authorised but the fishing or taking is in breach of any condition of his authorisation).
- (2) A person is guilty of an offence if he has an instrument in his possession, other than an instrument which is a licensable means of fishing, with intent to use it to fish for or take fish in circumstances where—
- (a) the fishing or taking may be authorised under section 27A above, but
  - (b) he is not authorised to fish for or take the fish under that section (or is so authorised but the fishing or taking would be in breach of any condition of an authorisation under that section).”
- (3) In Schedule 4 to that Act (offences), in the table in paragraph 1(2), at the end insert—

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“Section 27B	Unauthorised fishing etc	(a) Summarily	A fine not exceeding
		(b) On indictment	£50,000.
			A fine.”

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*Status: Point in time view as at 01/04/2013.*

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### Commencement Information

**I41** S. 219 in force at 1.1.2011 by S.I. 2010/298, art. 2, Sch. para. 13

## 220 Enforcement

- (1) Part 5 of the Salmon and Freshwater Fisheries Act 1975 (c. 51) (administration and enforcement) is amended as follows.
- (2) In section 31 (powers of search), in subsection (1)—
  - (a) in paragraph (b), the words “in contravention of this Act” are omitted;
  - (b) in paragraph (c)(i), the words “which has been caught in contravention of this Act” are omitted;
  - (c) in paragraph (d) after “fish” insert “ (or a sample of any fish) ”;
  - (d) after paragraph (d) insert—
    - “(e) may disable or destroy any dam, fishing weir, fishing mill dam or fixed engine which he has reasonable cause to suspect of having operated or been used, or of being likely to be used, in contravention of this Act.”
- (3) In section 32 (power to enter lands), subsection (1)(ii) and the preceding “or” are omitted.
- (4) In section 33 (orders and warrants to enter suspected premises), in subsection (2), for the words from “seize” to the end substitute—
  - “(a) seize any illegal net or other instrument, or any net or other instrument suspected to have been illegally used, that may be found on the premises;
  - (b) seize any fish suspected to have been illegally taken or sold that may be found on the premises; or
  - (c) disable or destroy any dam, fishing weir, fishing mill dam or fixed engine suspected to have operated or been used illegally that may be found on the premises.”
- (5) In that section, in subsection (3), for “one week” substitute “ three months ”.
- (6) In section 34 (power to apprehend persons fishing illegally etc)—
  - (a) in the heading, the words “at night” are omitted;
  - (b) the words from “between the end” to “following morning” are omitted.
- (7) In section 35 (power to require production of fishing licences), in subsection (1)—
  - (a) for “being about to” substitute “ intending to ”;
  - (b) for “to have within the preceding half hour” substitute “ of having recently ”;
  - (c) after “in any area,” insert “ in circumstances where the fishing would require a licence or authorisation under this Act or a licence under section 16 of the Wildlife and Countryside Act 1981, ”.
- (8) In that section, subsection (2) is omitted.
- (9) In Schedule 4 (offences), in paragraph 1(2), in the fourth column of the table, in the entry relating to section 5(1), for “The prescribed sum” substitute “ £50,000 ”.

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: Marine and Coastal Access Act 2009, Part 7 is up to date with all changes known to be in force on or before 22 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

**I42** S. 220 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 12

### 221 Power to specify fish

(1) After section 40 of the Salmon and Freshwater Fisheries Act 1975 (c. 51) insert—

#### “40A Power to specify fish

The appropriate national authority may by order specify fish of any description for the purposes of any or all of the following—

- (a) section 1, 2, 25 or 27A above;
- (b) section 32 of the Salmon Act 1986;
- (c) paragraph 6 of Schedule 25 to the Water Resources Act 1991;
- (d) section 6(6) of the Environment Act 1995.”

(2) In section 41 of that Act (interpretation), in subsection (1), after the definition of “the Agency” insert—

““the appropriate national authority” means—

- (a) the Secretary of State, except in relation to Wales (within the meaning of the Government of Wales Act 2006);
- (b) in relation to Wales (within that meaning), the Welsh Ministers;”.

#### Commencement Information

**I43** S. 221 partly in force; s. 221 in force for specified purposes at Royal Assent see s. 324(1)(c)

**I44** S. 221 in force at 12.1.2010 in so far as not already in force by S.I. 2009/3345, art. 2, Sch. para. 12

### 222 Order-making powers: supplementary

After section 40A of the Salmon and Freshwater Fisheries Act 1975 (as inserted by section 221 above) insert—

#### “40B Orders: supplementary

- (1) An order under section 1, 25 or 40A above may make different provision for different purposes (and, in particular, different provision in relation to different areas or waters).
- (2) Such an order is to be made by statutory instrument.
- (3) A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of—
  - (a) either House of Parliament, in the case of an order made by the Secretary of State;
  - (b) the National Assembly for Wales, in the case of an order made by the Welsh Ministers.”

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: Marine and Coastal Access Act 2009, Part 7 is up to date with all changes known to be in force on or before 22 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

**I45** S. 222 partly in force; s. 222 in force for specified purposes at Royal Assent see s. 324(1)(c)

**I46** S. 222 in force at 12.1.2010 in so far as not already in force by S.I. 2009/3345, art. 2, Sch. para. 12

### 223 Definitions relating to fish

(1) In section 41 of the Salmon and Freshwater Fisheries Act 1975 (interpretation), subsection (1) is amended as follows.

(2) For the definition of “eels” substitute—

““eels” means any fish of the species *Anguilla anguilla*, and includes elvers and the fry of eels;”.

(3) After that definition insert—

““fish” includes crustaceans and molluscs;”.

(4) After the definition of “foreshore” insert—

““freshwater crayfish” means any freshwater decapod crustacean of the Families Astacidae, Cambaridae or Parastacidae;”.

(5) For the definition of “freshwater fish” substitute—

““freshwater fish” means any fish habitually living in fresh water, exclusive of—

- (a) salmon, trout, eels, lampreys, smelt and any other fish of a kind which migrates from fresh to salt water, or from salt to fresh water, in order to spawn;
- (b) any kind of crustacean other than freshwater crayfish and Chinese mitten crabs (*Eriocheir sinensis*); and
- (c) any kind of mollusc;”.

(6) After the definition of “screen” insert—

““smelt” means any fish of the species *Osmerus eperlanus*;”.

#### Commencement Information

**I47** S. 223(1) in force at 12.1.2010 for specified purposes by S.I. 2009/3345, art. 2, Sch. para. 13

**I48** S. 223(1) in force at 1.1.2011 in so far as not already in force by S.I. 2010/298, art. 2, Sch. para. 13

**I49** S. 223(2)(6) in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 13

**I50** S. 223(3)-(5) in force at 1.1.2011 by S.I. 2010/298, art. 2, Sch. para. 13

### Byelaws

### 224 Power to make byelaws

(1) In Schedule 25 to the Water Resources Act 1991 (c. 57) (bylaw-making powers of the Agency), paragraph 6 (byelaws for purposes of fisheries functions) is amended as follows.

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: Marine and Coastal Access Act 2009, Part 7 is up to date with all changes known to be in force on or before 22 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) In sub-paragraph (1), in paragraph (b), for the words from “salmon fisheries” to the end substitute “ fisheries of fish to which this paragraph applies. ”
- (3) After that sub-paragraph insert—
  - “(1A) This paragraph applies to—
    - (a) salmon, trout, eels, lampreys, smelt, shad and freshwater fish; and
    - (b) fish of such other description as may be specified for the purposes of this paragraph by order under section 40A of the Salmon and Freshwater Fisheries Act 1975.”
- (4) In sub-paragraph (2), after paragraph (a) insert—
  - “(aa) specifying close seasons or times for the taking of any fish to which this paragraph applies by such means as may be prescribed by the byelaws;”.
- (5) In that sub-paragraph, in paragraph (b)(i), after “size” insert “ greater or ”.
- (6) In that sub-paragraph, in paragraph (e) at the end insert “ (including requiring fixed engines during close seasons or times to be removed or made incapable of taking or obstructing the passage of fish) ”.
- (7) Sub-paragraph (3) is omitted.
- (8) Sub-paragraph (4) is omitted.
- (9) After sub-paragraph (5) insert—
  - “(5A) A byelaw under this paragraph does not apply to a person (including an employee or agent of the Agency) to the extent that he is acting—
    - (a) with the written authority of the Agency; and
    - (b) in accordance with any conditions imposed by the Agency in relation to that authority.
  - (5B) For the avoidance of doubt, a byelaw under this paragraph may apply to an historic installation as to any other fixed engine.”
- (10) Any byelaw made by the Environment Agency under paragraph 6(3) of that Schedule and in force immediately before the coming into force of subsection (7) above shall in relation to any period after the coming into force of that subsection be regarded as having been made under paragraph 6(2) of that Schedule, as amended by this section.

#### **Commencement Information**

**I51** S. 224 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 14

## **225 Byelaws: emergency procedures**

- (1) In the Water Resources Act 1991 (c. 57), in section 210 (byelaw-making powers of the Agency) at the end insert—
  - “(3) Schedule 27 to this Act (emergency fisheries byelaws) shall have effect.”
- (2) In that Act, after Schedule 26 insert—

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: Marine and Coastal Access Act 2009, Part 7 is up to date with all changes known to be in force on or before 22 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## “SCHEDULE 27

Section 210(3)

### EMERGENCY FISHERIES BYELAWS

#### *Emergency fisheries byelaws*

- 1 (1) In this Schedule, “emergency fisheries byelaw” means a byelaw made under paragraph 6 of Schedule 25 to this Act (fisheries) in the circumstances in sub-paragraph (2) below.
- (2) The circumstances are that—
  - (a) the Agency considers that, because of any event or likely event, harm is occurring or is likely to occur to—
    - (i) any fish to which paragraph 6 of Schedule 25 to this Act applies or to the spawn, gametes or food of any such fish, or
    - (ii) the marine or coastal, or aquatic or waterside, environment,
  - (b) the Agency considers that the byelaw would prevent or limit that harm, or would be reasonably likely to do so,
  - (c) the Agency considers that for that purpose there is a need for the byelaw to come into force as a matter of urgency, and
  - (d) the event or the likelihood of the event could not reasonably have been foreseen.
- (3) Schedule 26 to this Act (procedure relating to byelaws made by the Agency) does not apply in relation to an emergency fisheries byelaw.
- (4) In sub-paragraph (2)(a), the reference to harm to the marine or coastal, or aquatic or waterside, environment is to—
  - (a) harm to the natural beauty or amenity of marine or coastal, or aquatic or waterside, areas (including their geological or physiographical features) or to any features of archaeological or historic interest in such areas, or
  - (b) harm to flora or fauna which are dependent on or associated with the marine or coastal, or aquatic or waterside, environment.

#### *Commencement*

- 2 An emergency fisheries byelaw comes into force—
  - (a) on the date specified in the byelaw, or
  - (b) if no date is so specified, on the day after that on which it is made.

#### *Notification of the appropriate national authority*

- 3 The Agency must, within 24 hours of making an emergency fisheries byelaw—
  - (a) send a copy of the byelaw to the appropriate national authority, and
  - (b) explain to the appropriate national authority why the byelaw is being made as an emergency fisheries byelaw.



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#### *Publication*

- 4 The Agency must publish notice of the making of an emergency fisheries byelaw (including a copy of the byelaw)—
- (a) in the London Gazette;
  - (b) where the byelaw has effect in Wales, in the Welsh language in such manner as the Agency thinks appropriate;
  - (c) in such other manner as it thinks appropriate for the purpose of bringing the byelaw to the attention of persons likely to be affected by it.

#### *Amendment and revocation*

- 5 (1) If at any time the appropriate national authority is satisfied that an emergency fisheries byelaw would better serve to prevent or limit the harm referred to in paragraph 1(2)(a) above if it were amended, the authority must amend it accordingly.
- (2) If at any time the appropriate national authority is satisfied that an emergency fisheries byelaw is no longer needed in order to prevent or limit the harm referred to in paragraph 1(2)(a) above, the authority must revoke it.
- (3) The Agency must publish notice of an amendment or revocation under this paragraph as specified in paragraph 4(a) to (c) above.

#### *Expiry and extension*

- 6 (1) Subject to paragraph 7 below, an emergency fisheries byelaw expires (unless earlier revoked)—
- (a) in accordance with provision made by the byelaw, or
  - (b) if the byelaw does not contain provision for its expiry, at the end of the period of twelve months beginning with the day on which it comes into force.
- (2) A byelaw may not under sub-paragraph (1)(a) above remain in force for longer than the period of twelve months beginning with the day on which it comes into force.
- 7 (1) The Agency may, at any time before an emergency fisheries byelaw expires, apply to the appropriate national authority for it to be extended.
- (2) On such an application, the appropriate national authority may extend the byelaw at any time before its expiry, provided the authority is satisfied that—
- (a) the byelaw is still needed to prevent or limit the harm referred to in paragraph 1(2)(a) above, and
  - (b) the need for the extension could not reasonably have been avoided by the Agency.
- (3) A byelaw may be extended under sub-paragraph (2) above for such period not exceeding six months as the appropriate national authority may specify.
- (4) A byelaw may not be extended under sub-paragraph (2) above on more than one occasion.

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### *Availability*

- 8 (1) Every emergency fisheries byelaw shall be printed and deposited at one or more of the offices of the Agency, including (if there is one) at an office in the area to which the byelaw applies; and copies of the byelaw shall be available at those offices, at all reasonable times, for inspection by the public free of charge.
- (2) Every person shall be entitled, on application to the Agency and on payment of such reasonable sum as the Agency may determine, to be furnished with a copy of any emergency fisheries byelaw so deposited by the Agency.

### *Proof*

- 9 The production of a printed copy of an emergency fisheries byelaw purporting to be made by the Agency upon which is indorsed a certificate, purporting to be signed on its behalf, stating—
- (a) that the byelaw was made by the Agency, and
  - (b) that the copy is a true copy of the byelaw,
- shall be prima facie evidence of the facts stated in the certificate, and without proof of the handwriting or official position of any person purporting to sign the certificate.

### *“Appropriate national authority”*

- 10 In this Schedule “appropriate national authority” has the same meaning as in the Salmon and Freshwater Fisheries Act 1975.”

#### **Commencement Information**

**I52** S. 225 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 14

## **226 Byelaws: enforcement**

In section 211 of the Water Resources Act 1991 (c. 57) (enforcement of byelaws), in subsection (3), for the words from “to a fine” to the end substitute—

- “(a) in the case of byelaws made by virtue of paragraph 4, to a fine not exceeding level 4 on the standard scale or such smaller sum as may be specified in the byelaws;
- (b) in the case of byelaws made by virtue of paragraph 6, to a fine not exceeding £50,000.”

#### **Commencement Information**

**I53** S. 226 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 14

*Status: Point in time view as at 01/04/2013.*

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## 227 Byelaws: compensation

- (1) Section 212 of the Water Resources Act 1991 (compensation in respect of certain fisheries byelaws) is amended as follows.
- (2) In subsection (1), for the words from “the claim” to the end substitute “ the Agency may pay that person such amount by way of compensation as it considers appropriate.”
- (3) Subsection (3) is omitted.

### Commencement Information

**I54** S. 227 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 14

## Supplementary

## 228 Theft of fish from private fisheries etc

- (1) In the Theft Act 1968 (c. 60), in Schedule 1 (offences of taking or destroying fish), paragraph 2 is amended as follows.
- (2) For sub-paragraph (1) substitute—
  - “(1) A person who unlawfully takes or destroys, or attempts to take or destroy, any fish in water which is private property or in which there is any private right of fishery shall on summary conviction be liable to a fine not exceeding level 5 on the standard scale.”
- (3) Sub-paragraph (2) is omitted.
- (4) In sub-paragraph (3), for “this paragraph” substitute “ sub-paragraph (1) above ”.

### Commencement Information

**I55** S. 228 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 14

## 229 Handling fish

- (1) Section 32 of the Salmon Act 1986 (c. 62) (handling salmon in suspicious circumstances) is amended as follows.
- (2) In the heading, for “salmon” substitute “ fish ”.
- (3) In subsection (1)—
  - (a) for “any salmon” substitute “ any fish to which this section applies ”;
  - (b) for “the salmon” substitute “ that fish ”;
  - (c) the words “by or for the benefit of another person” are omitted.
- (4) After that subsection insert—
  - “(1A) This section applies to—
    - (a) salmon, trout, eels, lampreys, smelt and freshwater fish; and

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- (b) fish of such other description as may be specified for the purposes of this section by order under section 40A of the Salmon and Freshwater Fisheries Act 1975.”
- (5) In subsection (2)—
  - (a) for “a salmon” substitute “ a fish to which this section applies ”;
  - (b) in paragraph (a)—
    - (i) after “or landing” insert “ , or selling, ”;
    - (ii) for “that salmon” substitute “ that fish ”;
  - (c) in paragraph (b)—
    - (i) for “that salmon” substitute “ that fish ”;
    - (ii) after “or landed,” insert “ or sold, ”.
- (6) In subsection (3), for “salmon” substitute “ fish ”.
- (7) In subsection (4), for “salmon” substitute “ fish to which this section applies ”.
- (8) In subsection (5)—
  - (a) in paragraph (a), for the words from “to imprisonment” to the end substitute “ to a fine not exceeding the statutory maximum ”;
  - (b) in paragraph (b), for the words from “to imprisonment” to the end substitute “ to a fine ”.
- (9) In subsection (7)—
  - (a) after “or landing” insert “ , or selling, ”
  - (b) for “a salmon” substitute “ a fish to which this section applies ”;
  - (c) for “the salmon” substitute “ the fish ”;
  - (d) at the end insert “ or sold ”.
- (10) At the end insert—
  - “(8) In this section “salmon”, “trout”, “eels”, “smelt”, “fish” and “freshwater fish” have the same meanings as in the Salmon and Freshwater Fisheries Act 1975.”

#### Commencement Information

**I56** S. 229 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 14

## 230 Duties of the Environment Agency

- (1) Section 6 of the Environment Act 1995 (c. 25) (general duties of the Agency) is amended as follows.
- (2) In subsection (6), for the words from “salmon” to the end substitute “fisheries of—
  - (a) salmon, trout, eels, lampreys, smelt and freshwater fish, and
  - (b) fish of such other description as may be specified for the purposes of this subsection by order under section 40A of the Salmon and Freshwater Fisheries Act 1975”.
- (3) In subsection (8), at the end insert—

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“salmon”, “trout”, “eels”, “smelt”, “fish” and “freshwater fish” have the same meanings as in the Salmon and Freshwater Fisheries Act 1975”

#### Commencement Information

I57 S. 230 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 14

### 231 Tweed and Esk fisheries

- (1) Section 111 of the Scotland Act 1998 (c. 46) (regulation of Tweed and Esk fisheries) is amended as follows.
- (2) In subsection (1), for “salmon, trout, eels and freshwater fish” substitute “ salmon, trout, eels, lampreys, smelt, shad and freshwater fish ”.
- (3) In subsection (4), in the definition of “conservation”, for “salmon, trout, eels and freshwater fish,” substitute “ salmon, trout, eels, lampreys, smelt, shad and freshwater fish, ”.
- (4) In subsection (4), in the definition of “eels”, “freshwater fish”, “salmon” and “trout”—
  - (a) after “ “eels”, ” insert “fish”, ”;
  - (b) after “ “salmon” ” insert “ , “smelt” ;
  - (c) after “Salmon and Freshwater Fisheries Act 1975” insert “ (as amended by the Marine and Coastal Access Act 2009) ”.
- (5) At the end insert—
  - “(6) An Order under subsection (1) may amend that subsection so as to—
    - (a) add any description of fish to it, or
    - (b) remove any description of fish from it.”

#### Commencement Information

I58 S. 231 partly in force; s. 231 in force for specified purposes at Royal Assent see s. 324(1)(c)

I59 S. 231 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 14

### 232 Keeping, introduction and removal of fish

- (1) The appropriate national authority may by regulations make provision for the purpose of prohibiting persons, in such cases as may be specified in the regulations, from carrying on any of the activities specified in subsection (2) otherwise than under and in accordance with a permit issued by [<sup>F1</sup>the appropriate agency].
- (2) The activities referred to in subsection (1) are—
  - (a) keeping any fish in the area to which this section applies;
  - (b) introducing any fish into any inland waters in that area;
  - (c) removing any fish from any inland waters in that area.
- (3) The area to which this section applies is the area consisting of—
  - (a) England,
  - (b) Wales, and

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- (c) so much of the catchment area of the River Esk as is in Scotland.
- (4) The references in subsection (2)(b) and (c) to inland waters do not include the River Tweed.
- (5) Regulations made under this section may in particular—
- (a) make provision as to the descriptions of permits to be issued;
  - (b) specify the manner and form of an application for a permit from [<sup>F2</sup>the appropriate agency] to carry out any activity specified in subsection (2) and the sum, or maximum sum, to be paid on the making of such an application;
  - (c) specify the circumstances in which such an application is to be granted or refused and any considerations which [<sup>F2</sup>the appropriate agency] may or must take into account when determining whether or not to issue such a permit;
  - (d) specify the conditions that may be incorporated into such a permit;
  - (e) make provision for the amendment, suspension or revocation of such a permit;
  - (f) make provision authorising [<sup>F2</sup>the appropriate agency] to exempt persons from any requirement under the regulations to obtain such a permit;
  - (g) make provision as to the effect of a prohibition under regulations made under this section on fishing pursuant to any licence, authorisation, permission, or right to fish;
  - (h) make provision enabling [<sup>F2</sup>the appropriate agency] to require a person in breach of any requirement under regulations made under this section, or in breach of any condition of a permit under such regulations—
    - (i) to take steps to ensure that the position is, so far as possible, restored to what it would have been had there been no such breach;
    - (ii) to allow [<sup>F2</sup>the appropriate agency] to take such steps;
    - (iii) to pay to [<sup>F2</sup>the appropriate agency] a sum representing reasonable expenses of any such steps taken or to be taken by [<sup>F3</sup>the appropriate agency];
  - (i) make provision creating criminal offences for the purpose of securing compliance with regulations made under this section or of any requirements under paragraph (h);
  - (j) make other provision for the enforcement of requirements under the regulations, including provision conferring the following powers on [<sup>F4</sup>the appropriate agency]—
    - (i) powers of entry;
    - (ii) powers of search and seizure;
    - (iii) powers to destroy or release any fish seized.
- (6) Provision under subsection (5)(a) may specify that a permit may be issued—
- (a) in respect of one or more of the activities specified in subsection (2);
  - (b) in relation to the carrying on of any one or more of those activities on one occasion or more than one occasion;
  - (c) for periods of limited or unlimited duration.
- (7) Provision under subsection (5)(i) must provide that where a person is guilty of an offence created under that subsection, the person is liable—
- (a) on summary conviction, to a fine not exceeding £50,000;
  - (b) on conviction on indictment, to a fine.
- (8) In this section—

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- [<sup>F5</sup>“appropriate agency” means—
- (a) the Environment Agency, otherwise than in relation to Wales, and
  - (b) the Natural Resources Body for Wales, in relation to Wales;]
- “appropriate national authority” means—
- (a) the Secretary of State, otherwise than in relation to Wales;
  - (b) the Welsh Ministers, in relation to Wales;
- references to “fish” include the spawn of fish;
- “inland waters” has the same meaning as in the Water Resources Act 1991 (c. 57);
- “River Tweed” means “the river” within the meaning of the Tweed Fisheries Amendment Act 1859 (c. lxx), as amended by byelaws.

#### Textual Amendments

- F1** Words in s. 232(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\), art. 1\(2\), Sch. 2 para. 447\(2\)](#) (with Sch. 7)
- F2** Words in s. 232(5) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\), art. 1\(2\), Sch. 2 para. 447\(3\)\(a\)](#) (with Sch. 7)
- F3** Words in s. 232(5)(h)(iii) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\), art. 1\(2\), Sch. 2 para. 447\(3\)\(b\)](#) (with Sch. 7)
- F4** Words in s. 232(5)(j) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\), art. 1\(2\), Sch. 2 para. 447\(3\)\(b\)](#) (with Sch. 7)
- F5** Words in s. 232(8) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\), art. 1\(2\), Sch. 2 para. 447\(4\)](#) (with Sch. 7)

#### Commencement Information

- I60** S. 232 partly in force; s. 232 in force for specified purposes at Royal Assent see s. 324(1)(c)
- I61** S. 232 in force at 12.1.2010 in so far as not already in force by [S.I. 2009/3345, art. 2, Sch. para. 14](#)

### 233 Consequential and supplementary amendments

- (1) Schedule 16 (which contains consequential and supplementary amendments relating to this Chapter) has effect.
- (2) The following provisions of the Salmon and Freshwater Fisheries Act 1975 (c. 51) (which are obsolete or no longer of practical utility) are omitted—
  - (a) in section 4 (poisonous matter etc), subsection (2);
  - (b) section 23 (export of salmon and trout);
  - (c) section 24 (consignment of salmon and trout).

#### Commencement Information

- I62** [S. 233\(1\)](#) in force at 12.1.2010 for specified purposes by [S.I. 2009/3345, art. 2, Sch. para. 15](#)
- I63** [S. 233\(1\)](#) in force at 1.1.2011 in so far as not already in force by [S.I. 2010/298, art. 2, Sch. para. 13](#)
- I64** [S. 233\(2\)](#) in force at 12.1.2010 by [S.I. 2009/3345, art. 2, Sch. para. 16](#)

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## CHAPTER 4

### OBSOLETE FISHERIES ENACTMENTS

#### 234 Repeal of spent or obsolete enactments

The following enactments are repealed—

- (a) the White Herring Fisheries Act 1771 (c. 31);
- (b) the Seal Fishery Act 1875 (c. 18);
- (c) section 13 of the Fisheries Act 1891 (c. 37) (proceedings for enforcement of Acts relating to salmon and freshwater fisheries);
- (d) the North Sea Fisheries Act 1893 (c. 17);
- (e) the Behring Sea Award Act 1894 (c. 2);
- (f) the Seal Fisheries (North Pacific) Act 1895 (c. 21);
- (g) the Seal Fisheries (North Pacific) Act 1912 (c. 10);
- (h) sections 86, 87 and 163 of the Port of London Act 1968 (c. xxxii) (powers of Port of London Authority in relation to fisheries).

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#### Commencement Information

**I65** S. 234 in force at 1.4.2010 by S.I. 2010/298, art. 2, Sch. para. 11



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