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DRAFT STATUTORY INSTRUMENTS

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**2015 No.**

**The Keeping and Introduction of Fish (England  
and River Esk Catchment Area) Regulations 2015**

**PART 1**

**INTRODUCTION**

**Citation, commencement and application**

- 1.**—(1) These Regulations—
- (a) may be cited as the Keeping and Introduction of Fish (England and River Esk Catchment Area) Regulations 2015; and
  - (b) come into force on 19th January 2015.
- (2) With the exception of Part 5, these Regulations apply in relation to live fish in—
- (a) England, and
  - (b) so much of the catchment area of the River Esk as is in Scotland.

**Interpretation**

- 2.** In these Regulations—
- “the Agency” means the Environment Agency;
- “fish” means fish or the spawn of fish and includes molluscs and crustaceans;
- “inland waters” means any water of a kind specified in section 221 of the Water Resources Act 1991<sup>(1)</sup> except that it does not include—
- (a) the River Tweed, or
  - (b) garden ponds less than 0.4 hectares in area, which are not fished, have no links to other waters and are located within the curtilage of a residential property;
- “keeping”, in relation to fish, means having, owning or controlling fish in inland waters;
- “permit” means a permit granted or to be granted under regulation 6(1);
- “premises”, except in regulation 3, means—
- (a) any land, artificial island, marine installation or structure;
  - (b) any vehicle; or
  - (c) any vessel;
- “vehicle” includes a trailer;

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<sup>(1)</sup> 1991 c. 57.

“vessel” includes any ship or boat or other vessel used in navigation, and any hovercraft, submersible craft or other floating craft, but does not include anything that permanently rests on, or is permanently attached to, the sea bed.

### Exclusions

3. These Regulations do not apply in relation to activities which take place—
  - (a) on the premises of an aquaculture production business authorised under regulation 6 of the Aquatic Animal Health (England and Wales) Regulations 2009(2); or
  - (b) during transportation between—
    - (i) the premises of any such business; or
    - (ii) the premises of one such business and the premises of another such business.

## PART 2

### OFFENCES RELATING TO THE INTRODUCTION AND KEEPING OF FISH

#### Introduction of fish

4. A person who, otherwise than under and in accordance with the terms of a permit granted under regulation 6 held by that person—

- (a) introduces fish into inland waters,
- (b) has in his possession fish for the purposes of their introduction into inland waters, or
- (c) causes or allows any other person to introduce fish into inland waters

commits an offence.

#### Keeping fish

5.—(1) A person who keeps in inland waters, otherwise than under and in accordance with the terms of a permit granted under regulation 6, any fish of a kind to which this regulation applies commits an offence.

(2) This regulation applies to any fish which belongs to a taxonomic order specified in Part 1 of the Schedule and is not of a species specified in Part 2 of the Schedule.

(3) In relation to a protected area, this regulation also applies to fish of any species which would otherwise be absent from that area.

(4) In paragraph (3) a “protected area” is—

- (a) a site of special scientific interest, as defined by section 52(1) of the Wildlife and Countryside Act 1981(3);
- (b) a European site or European marine site as defined by regulation 8 of the Conservation of Habitats and Species Regulations 2010(4);
- (c) a wetland designated under paragraph 1 of article 2 of the Ramsar Convention, as defined by section 37A(4) and (5) of the Wildlife and Countryside Act 1981(5).

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(2) [S.I. 2009/463](#).

(3) [1981 c. 69](#). Relevant amendments to section 52(1) were made by section 75(1) of, and paragraph 5(1) and (2) of Schedule 9 to, the Countryside and Rights of Way Act [2000 \(c. 37\)](#).

(4) [S.I. 2010/490](#). Regulation 8 was amended by [S.I. 2012/1927](#).

(5) Section 37A was inserted by section 77 of the Countryside and Rights of Way Act [2000 \(c. 37\)](#).

## PART 3

### PERMITS

#### Grant of permit

6.—(1) On receipt of an application for a permit authorising the carrying on of any of the activities mentioned in paragraph (2), the Agency may grant such a permit.

(2) The activities to which paragraph (1) refers are—

- (a) the keeping of fish of a kind to which regulation 5 applies in inland waters;
- (b) the introduction of fish into inland waters.

(3) A permit may be granted subject to such conditions as the Agency may see fit.

(4) In particular, conditions may be imposed—

- (a) to limit the number of fish introduced into, or kept in, any inland waters;
- (b) to minimise the risk of fish escaping from any inland waters;
- (c) to ensure that the keeping or movement of fish is not harmful to the environment or to any fishery in waters that are connected to each other (including waters connected by a floodplain);
- (d) in relation to the keeping and retention of records for any activity authorised by the permit;
- (e) in relation to the disposal of fish;
- (f) setting out the circumstances in which a permit holder must notify the Agency; and
- (g) limiting the time for which the permit is valid, so that the keeping of specified fish in inland waters is only allowed as a temporary measure.

(5) In this regulation, “movement of fish” means removal of fish from, or introduction of fish into, inland waters.

## PART 4

### ENFORCEMENT AND ADMINISTRATION

#### Revocation etc. of a permit

7.—(1) The Agency may, by notice served on the holder of a permit, suspend or revoke the permit—

- (a) if any condition of the permit is breached, or
- (b) if the environmental conditions of the inland waters to which the permit relates have changed since the date on which the permit was granted, such that the Agency considers that a suspension or revocation of the permit is necessary.

(2) The Agency may, by notice served on the holder of a permit, vary the permit if in the Agency’s opinion the permit requires revision.

(3) The Agency may suspend, vary or revoke a permit at the request of the holder of that permit.

### **Notice to remove and dispose of fish**

**8.**—(1) If fish are introduced into inland waters or kept in contravention of these Regulations, the Agency may serve a notice on the holder of a permit or, if there is none, the owner or occupier of those waters requiring the holder of the permit or the owner or occupier (as the case may be)—

(a) to remove and dispose of fish—

(i) in a manner specified in the notice, and

(ii) at the expense of the holder of the permit or the owner or occupier; and

(b) to take steps to ensure that the position is, as far as possible, restored to what it would have been had the Regulations not been contravened.

(2) If a notice under paragraph (1) is not complied with, the Agency may arrange for—

(a) the removal and disposal of fish; and

(b) the taking of steps to ensure that the position is, as far as possible, restored to what it would have been had these Regulations not been contravened.

(3) The Agency may remove and dispose of fish without serving notice under paragraph (1)—

(a) in an emergency; or

(b) if the holder of the permit or the owner or occupier cannot be ascertained.

(4) Where the Agency acts under paragraph (2) or (3)(a), it may do so at the expense of the holder of the permit or the owner or occupier of inland waters and any amount that falls to be repaid may be recovered by the Agency as a civil debt.

(5) Failure to comply with a notice under paragraph (1) without reasonable excuse is an offence.

### **Time in which a notice takes effect**

**9.**—(1) Subject to paragraph (2) and (3), a notice served under regulation 7(1) or (2) or regulation 8(1) takes effect 28 days after the date on which it was served.

(2) Where the notice specifies a period, the notice takes effect on the expiry of that period.

(3) Where an appeal under regulation 10 is brought, the notice does not take effect until the appeal has been determined or withdrawn, unless the appointed person determining the appeal so directs.

### **Appeals**

**10.**—(1) An applicant for the grant of a permit may appeal against—

(a) a refusal to grant it, or

(b) the imposition of any condition.

(2) The holder of a permit or an owner or occupier of inland waters served with a notice under regulation 7(1) or (2) or regulation 8(1) may appeal against that notice.

(3) The appellant must serve written notice of appeal on the Agency within 28 days from the date on which notification of the decision being appealed against was given.

(4) On receipt of a notice of appeal, the Agency must appoint an independent person to determine the appeal.

(5) The appeal is by way of written representations from the Agency and the appellant, and is subject to any time limits determined by the independent person.

(6) The independent person decides whether to allow the appeal (and may direct the Agency to grant a permit or to vary any condition).

## **Powers of entry**

**11.—**(1) An officer of the Agency may, on producing a duly authenticated authorisation if required, enter any premises (except any premises used wholly as a private dwelling house) at any reasonable hour—

- (a) where the officer has reason to suspect that an offence under these Regulations has been, or is about to be, committed; or
- (b) for the purposes of exercising the powers conferred by regulation 7(1)(b) or regulation 8(3), or for investigating whether any of those powers are exercisable.

(2) The officer may be accompanied by such other persons, and may use any such vehicles, vessels or equipment as the officer considers necessary.

(3) An officer may enter any premises (or any part of premises) which are a private dwelling only if a justice of the peace has issued a warrant authorising the officer to do so.

(4) If a justice of the peace, on sworn information in writing, is satisfied that there are reasonable grounds for entry into any premises for the purposes described in paragraph (1), and either—

- (a) admission has been refused, or a refusal is expected, and (in either case) notice to apply for a warrant has been given to the occupier,
- (b) asking for admission for giving such notice would defeat the object of the entry,
- (c) the case is one of urgency, or
- (d) the premises are unoccupied or the occupier is temporarily absent,

the justice may by signed warrant authorise the officer to enter the premises, if need be by reasonable force.

(5) A warrant under this regulation is valid for one month.

(6) An officer who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as they were before entry.

## **Powers of an authorised officer**

**12.—**(1) An officer entering premises under regulation 11 may—

- (a) stop and detain any vehicle or vessel;
- (b) inspect the premises, and any net, trap, machinery, equipment or fish on the premises;
- (c) take samples (including samples of fish) from anything on the premises;
- (d) seize any fish, net, machinery or other equipment on the premises so far as it is necessary for the purposes described in regulation 11(1);
- (e) carry out any search, investigation, examinations or tests;
- (f) seize and humanely kill samples of fish for evidential purposes;
- (g) have access to, and inspect, copy or seize any document or record (in whatever form it is held) that he considers may be relevant to the purposes described in regulation 11(1); and
- (h) have access to, inspect and check the operation of any computer and any associated apparatus or material that is or has been in use in connection with a record of a kind referred to in sub-paragraph (g).

(2) For the purpose of paragraph (1)(h), the officer may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material—

- (a) to afford such assistance as may be reasonably required; and
- (b) where a record is kept by means of a computer, to produce the record in a form in which it may be taken away.

(3) If the record is not produced in the form required by paragraph (2)(b), the officer may seize the computer or electronic storage device.

(4) Where an officer has reason to suspect that a person has committed an offence under these Regulations, the officer may require the person to provide the person's name and address.

(5) Where an officer has entered any premises, and it is not reasonably practicable to determine at the time whether any document or electronic file, fish, net, trap, machinery or other equipment on those premises is relevant to the purposes described in regulation 11(1), the inspector may seize it to ascertain whether or not it is relevant.

(6) Any fish seized may be disposed of as the authorised officer sees fit.

## Obstruction

**13.** Any person who—

- (a) intentionally obstructs an officer from exercising his powers under this Part,
- (b) without reasonable cause, fails to give any officer exercising his powers under this Part any assistance or information that that officer may reasonably require under these Regulations,
- (c) furnishes to any officer exercising his powers under this Part any information knowing it to be false or misleading, or
- (d) fails to produce a record when required to do so to any officer exercising his powers under this Part,

commits an offence.

## Penalties

**14.—(1)** A person guilty of an offence under regulation 4 (introduction of fish), regulation 5 (keeping of fish), regulation 8(5) (failure to comply with a notice) or regulation 13 (obstruction) is liable—

- (a) on summary conviction, to a fine not exceeding £50,000; or
- (b) on conviction on indictment, to a fine.

(2) If section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is in force on the day on which these Regulations are made, paragraph (1)(a) applies in relation to a conviction by a court in England with the omission of the words “not exceeding £50,000”.

## Offences by bodies corporate

**15.—(1)** Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent of, or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar person of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

that person, as well as the body corporate, is guilty of an offence.

(2) Any penalty imposed on a body corporate by a court in Scotland on conviction of an offence under these Regulations is to be recovered by civil diligence in accordance with section 221 of the Criminal Procedure (Scotland) Act 1995(6).

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(6) [1995 c. 46](#). Section 221 was amended by sections 226 and 227 of, and paragraph 23(a) and (b) of Schedule 5 to, the Bankruptcy and Diligence (Scotland) Act [2007 \(asp 3\)](#); article 3(2)(3), and Schedule 1 to, [S.S.I. 2009/369](#); section 61 of, and paragraph 25 of Schedule 3 to, the Debt Arrangement and Attachment (Scotland) Act [2002 \(asp 17\)](#).

## Offences by partnerships and unincorporated associations

**16.—**(1) Proceedings for an offence under these Regulations alleged to have been committed by a partnership, a Scottish partnership or an unincorporated association may be brought against the partnership, Scottish partnership or association by its name.

(2) For the purposes of such proceedings—

- (a) rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate;
- (b) section 33 of the Criminal Justice Act 1925(7) and Schedule 3 to the Magistrates' Courts Act 1980(8) apply in relation to the partnership or association as they apply in relation to a body corporate.

(3) A fine imposed on a partnership, Scottish partnership or association on its conviction for an offence under these Regulations is to be paid out of the funds of the partnership, Scottish partnership or association.

(4) Any penalty imposed on a Scottish partnership or unincorporated association on conviction of an offence under these Regulations by a court in Scotland is to be recovered by civil diligence in accordance with section 221 of the Criminal Procedure (Scotland) Act 1995.

(5) Where an offence under these Regulations committed by a partnership or a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner (as well as the partnership or Scottish partnership) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(6) Where an offence under these Regulations committed by an unincorporated association is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the association, that officer (as well as the association) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(7) In paragraph (5), “partner” includes a person purporting to act as a partner.

(8) In paragraph (6), “officer” means an officer of the association or a member of its governing body, or a person purporting to act in such a capacity.

## PART 5

### MISCELLANEOUS

#### Transitional

**17.—**(1) A licence under section 1 of the Import of Live Fish (England and Wales) Act 1980(9) authorising a person to keep or release live fish, or the live eggs of fish, which is in force immediately

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- (7) 1925 c. 86. Subsections (1) and (2) of section 33 were repealed by section 132 of, and Schedule 6 to, the Magistrates' Courts Act 1952 (c. 55); subsection (3) was amended by section 56(1) of, and paragraph 19 of Part 2 of Schedule 8 to, the Courts Act 1971 (c. 23); subsection (4) was amended by section 109(1) and (3) of, and paragraph 71 of Schedule 8 to, and Schedule 10 to, the Courts Act 2003 (c. 39); subsection (5) was repealed by section 132 of, and Schedule 6 to, the Magistrates' Courts Act 1952.
  - (8) 1980 c. 43. Paragraph 2(a) of Schedule 3 was repealed by sections 41 and 332 of, paragraph 51(1) and 13(a) of Schedule 3 to, and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44); paragraph 5 was repealed by sections 25(2) and 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53); paragraph 6 was amended by section 41 of, and paragraph 51(1) and (13)(b) of Schedule 3 to, the Criminal Justice Act 2003.
  - (9) 1980 c. 27. Section 1 was amended by regulation 45 of, and paragraph 5 of Schedule 2 to, S.I. 2009/463; section 132 of, and paragraph 8 of Schedule 9 to, the Environmental Protection Act 1990 (c. 43); section 105(1) of, and paragraph 62 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006 (c. 16); article 4(1) of, and paragraph 158 of Schedule 2 to, S.I. 2013/755; and section 37(2) of the Fisheries Act 1981 (c. 29).

before the coming into force of these Regulations, is to be taken to be a permit under these Regulations authorising the keeping of fish or the introduction of fish into inland waters.

(2) This regulation applies in relation to live fish, and live eggs of fish, in England only.

#### **Amendment of the Salmon and Freshwater Fisheries Act 1975**

**18.**—(1) In section 30 of the Salmon and Freshwater Fisheries Act 1975<sup>(10)</sup>, after “an inland water” on each occasion on which it appears, insert “in Wales”.

(2) In section 39(1)(b) of the Salmon and Freshwater Fisheries Act 1975, at the beginning, insert “except where otherwise indicated,”.

*Name*  
Minister of State  
Department for Environment, Food and Rural  
Affairs

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<sup>(10)</sup> 1975 c. 51. Section 30 was amended by article 4(1) of, and paragraph 127 and 142 of Schedule 2 to, [S.I. 2013/755](#); section 190 of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15); section 34 of the Salmon Act 1986 (c. 62); and sections 105 and 120 of, and paragraph 17 of Schedule 15 to, and Schedule 24 to, the Environment Act 1995 (c. 25).