



Salmon and Freshwater Fisheries Act 1975

1975 CHAPTER 51

PART II

OBSTRUCTIONS TO PASSAGE OF FISH

F16 Fixed engines.

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Textual Amendments

F1 Ss. 6-8 repealed (1.1.2011) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), Sch. 16 para. 4, [22 Pt. 5\(B\)](#); S.I. 2010/298, art. 2, Sch. para. 13

F17 Fishing weirs.

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Textual Amendments

F1 Ss. 6-8 repealed (1.1.2011) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), Sch. 16 para. 4, [22 Pt. 5\(B\)](#); S.I. 2010/298, art. 2, Sch. para. 13

F18 Fishing mill dams.

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Textual Amendments

F1 Ss. 6-8 repealed (1.1.2011) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), Sch. 16 para. 4, [22 Pt. 5\(B\)](#); S.I. 2010/298, art. 2, Sch. para. 13

Status: Point in time view as at 01/01/2011.

Changes to legislation: There are currently no known outstanding effects for the Salmon and Freshwater Fisheries Act 1975, Part II. (See end of Document for details)

9 Duty to make and maintain fish passes.

- (1) Where in any waters frequented by salmon or migratory trout—
- (a) a new dam is constructed or an existing dam is raised or otherwise altered so as to create increased obstruction to the passage of salmon or migratory trout, or any other obstruction to the passage of salmon or migratory trout is created, increased or caused; or
 - (b) a dam which from any cause has been destroyed or taken down to the extent of one-half of its length is rebuilt or reinstated,
- the owner or occupier for the time being of the dam or obstruction shall, if so required by notice given by the water authority ^{F2} . . . and within such reasonable time as may be specified in the notice, make a fish pass for salmon or migratory trout of such form and dimensions as [^{F3}the Agency] may approve as part of the structure of, or in connection with, the dam or obstruction, and shall thereafter maintain it in an efficient state.
- (2) If any such owner or occupier fails to make such a fish pass, or to maintain such a fish pass in an efficient state, he shall be guilty of an offence.
- (3) The water authority may cause to be done any work required by this section to be done, and for that purpose may enter on the dam or obstruction or any land adjoining it, and may recover the expenses of doing the work in a summary manner from any person in default.
- (4) Nothing in this section—
- (a) shall authorise the doing of anything that may injuriously affect any public waterworks or navigable river, canal, or inland navigation, or any dock, the supply of water to which is obtained from any navigable river, canal or inland navigation, under any Act of Parliament; or
 - (b) shall prevent any person from removing a fish pass for the purpose of repairing or altering a dam or other obstruction, provided that the fish pass is restored to its former state of efficiency within a reasonable time; or
 - (c) shall apply to any alteration of a dam or other obstruction, unless—
 - (i) the alteration consists of a rebuilding or reinstatement of a dam or other obstruction destroyed or taken down to the extent of one-half of its length, or
 - (ii) the dam or obstruction as altered causes more obstruction to the passage of salmon or migratory trout than was caused by it as lawfully constructed or maintained at any previous date.

Textual Amendments

- F2** Words repealed (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190, [Sch. 27 Pt. I](#) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), [Sch. 26 paras. 3\(1\)\(2\), 17, 40\(4\), 41\(1\), 57\(6\), 58](#))
- F3** Words in s. 9(1) substituted (1.4.1996) by 1995 c. 25, s. 105, [Sch. 15 para. 10](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#)

Modifications etc. (not altering text)

- C1** S. 9 excluded (7.3.1995) by S.I. 1995/519, [art. 3\(13\)](#)
- C2** S. 9 applied (16.3.1992) by [Avon Weir Act 1992 \(c. v\)](#), s. 5(5).
- C3** S. 9 excluded (19.3.2007) by [Ouseburn Barrage Order 2007 \(S.I. 2007/608\)](#), arts. 1, [3\(6\)](#) (with arts. 46-48, [Sch. 6 para. 23](#))

Status: Point in time view as at 01/01/2011.

Changes to legislation: There are currently no known outstanding effects for the Salmon and Freshwater Fisheries Act 1975, Part II. (See end of Document for details)

10 Power of water authority to construct and alter fish passes.

- (1) Any water authority may, ^{F4} . . . construct and maintain in any dam or in connection with any dam a fish pass of such form and dimensions [^{F5}as it may determine], so long as no injury is done by such a fish pass to the milling power, or to the supply of water of or to any navigable river, canal or other inland navigation.
- (2) Any water authority may, ^{F6} . . . abolish or alter, or restore to its former state of efficiency, any existing fish pass or free gap, or substitute another fish pass or free gap, provided that no injury is done to the milling power, or to the supply of water of or to any navigable river, canal or other inland navigation.
- (3) If any person injures any such new or existing fish pass, he shall pay the expenses incurred by the water authority in repairing the injury, and any such expenses may be recovered by the water authority in a summary manner.

Textual Amendments

- F4** Words in s. 10(1) repealed (1.4.1996) by 1995 c. 25, ss. 105, 120(3), Sch. 15 para. 11(1)(a), Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- F5** Words in s. 10(1) substituted (1.4.1996) by 1995 c. 25, s. 105, Sch. 15 para. 11(1)(b) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- F6** Words in s. 10(2) repealed (1.4.1996) by 1995 c. 25, ss. 105, 120(3), Sch. 15 para. 11(2), Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

11 Minister's consents and approvals for fish passes.

- ^{F7}(1) Any approval given by the Agency to or in relation to a fish pass may, if in giving it the Agency indicates that fact, be provisional until the Agency notifies the applicant for approval that the pass is functioning to its satisfaction.
- (1A) The applicant for any such approval—
- (a) shall be liable to meet any costs incurred (whether by him or by the Agency or any other person) for the purposes of, or otherwise in connection with, the performance of the Agency's function of determining for the purposes of subsection (1) above whether or not the fish pass in question is functioning to its satisfaction; and
 - (b) shall provide the Agency with such information or assistance as it may require for the purpose of performing that function.]
- (2) While any such approval [^{F8}is provisional, the Agency] may, after giving the applicant not less than 90 days' notice of [^{F9}its intention to do so, revoke the approval].
- (3) Where [^{F10}the Agency]revokes a provisional approval given to a fish pass forming part of or in connection with a dam or other obstruction, [^{F11}it] may extend the period within which a fish pass is to be made as part of or in connection with the obstruction.
- (4) [^{F12}The Agency] may approve and certify any fish pass if [^{F13}it] is of opinion that it is efficient in all respects and for all purposes, whether it was constructed under this Act or not.
- (5) Where a fish pass has received the approval of [^{F14}the Agency], and the approval has not been revoked, it shall be deemed to be a fish pass in conformity with this Act,

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notwithstanding that it was not constructed in the manner and by the person specified in this Act.

Textual Amendments

- F7** S. 11(1)(1A) substituted for s. 11(1) (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 12(1)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F8** Words in s. 11(2) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 12(2)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F9** Words in s. 11(2) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 12(2)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F10** Words in s. 11(3) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 12(3)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F11** Word in s. 11(3) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 12(3)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F12** Words in s. 11(4) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 12(4)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F13** Word in s. 11(4) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 12(4)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F14** Words in s. 11(5) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 12(5)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

12 Penalty for injuring or obstructing fish pass or free gap.

- (1) If any person—
 - (a) wilfully alters or injures a fish pass; or
 - (b) does any act whereby salmon or trout are obstructed or liable to be obstructed in using a fish pass or whereby a fish pass is rendered less efficient; or
 - (c) alters a dam or the bed or banks of the river so as to render a fish pass less efficient; or
 - (d) uses any contrivance or does any act whereby salmon or trout are in any way liable to be scared, hindered or prevented from passing through a fish pass,
 he shall be guilty of an offence, and shall also in every case pay any expenses which may be incurred in restoring the fish pass to its former state of efficiency; and any such expenses may be recovered in a summary manner.
- (2) The owner or occupier of a dam shall be deemed to have altered it if it is damaged, destroyed or allowed to fall into a state of disrepair, and if after notice is served on him by the water authority [^{F15}in whose area the dam is or was situated] he fails to repair or reconstruct it within a reasonable time so as to render the fish pass as efficient as before the damage or destruction.
- (3) If any person—
 - (a) does any act for the purpose of preventing salmon or trout from passing through a fish pass, or takes, or attempts to take, any salmon or trout in its passage through a fish pass; or
 - (b) places any obstruction, uses any contrivance or does any act whereby salmon or trout may be scared, deterred or in any way prevented from freely entering and passing up and down a free gap at all periods of the year,
 he shall be guilty of an offence.

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- (4) This section shall not apply to a temporary bridge or board used for crossing a free gap, and taken away immediately after the person using it has crossed.

Textual Amendments

F15 Words repealed (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190, [Sch. 27 Pt. I](#) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), [Sch. 26 paras. 3\(1\)\(2\), 17, 40\(4\), 41\(1\), 57\(6\), 58](#))

13 Sluices.

- (1) Subject to subsection (3) below, unless permission in writing is granted by the water authority [^{F16}for the area], any sluices for drawing off the water which would otherwise flow over any dam in waters frequented by salmon or migratory trout shall be kept shut on Sundays and at all times when the water is not required for milling purposes, in such manner as to cause the water to flow through any fish pass in or connected with the dam or, if there is no such fish pass, over the dam.
- (2) If any person fails to comply with this section, he shall be guilty of an offence.
- (3) This section shall not prevent any person opening a sluice for the purpose of letting off water in cases of flood or for milling purposes or when necessary for the purpose of navigation or, subject to previous notice in writing being given to the water authority, for cleaning or repairing the dam or mill or its appurtenances.

Textual Amendments

F16 Words repealed (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190, [Sch. 27 Pt. I](#) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), [Sch. 26 paras. 3\(1\)\(2\), 17, 40\(4\), 41\(1\), 57\(6\), 58](#))

[^{F17}14 Screens.

- (1) This section applies in any case where—
- by means of any conduit or artificial channel, water is diverted from waters frequented by salmon or migratory trout; and
 - any of the water so diverted is used for the purposes of a water or canal undertaking or for the purposes of any mill or fish farm;
- and in this section “the responsible person” means the owner of the water or canal undertaking or (as the case may be) the occupier of the mill or the owner or occupier of the fish farm.
- (2) Where this section applies, the responsible person shall, unless an exemption from the obligation is granted by the Agency, ensure (at his own cost) that there is placed and maintained at the entrance of, or within, the conduit or channel a screen which—
- subject to subsection (4) below, prevents the descent of the salmon or migratory trout; and
 - in a case where any of the water diverted is used for the purposes of a fish farm, prevents the egress of farmed fish from the fish farm by way of the conduit or channel.

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- (3) Where this section applies, the responsible person shall also, unless an exemption from the obligation is granted by the Agency, ensure (at his own cost) that there is placed and maintained across any outfall of the conduit or channel a screen which—
 - (a) prevents salmon or migratory trout from entering the outfall; and
 - (b) in a case where any of the water diverted is used for the purposes of a fish farm, prevents the egress of farmed fish from the fish farm by way of the outfall.
- (4) Where a screen is placed within any conduit or channel pursuant to subsection (2) above, the responsible person shall ensure that a continuous by-wash is provided immediately upstream of the screen, by means of which salmon or migratory trout may return by as direct a route as practicable to the waters from which they entered the conduit or channel (and accordingly nothing in subsection (2) or (3) above applies in relation to a by-wash provided for the purposes of this subsection).
- (5) Any screen placed, or by-wash provided, in pursuance of this section shall be so constructed and located as to ensure, so far as reasonably practicable, that salmon or migratory trout are not injured or damaged by it.
- (6) No such screen shall be so placed as to interfere with the passage of boats on any navigable canal.
- (7) Any exemption under subsection (2) or (3) above may be granted subject to conditions.
- (8) If any person who is required to do so by this section fails to ensure that a screen is placed or maintained, or that a by-wash is provided, in accordance with the provisions of this section, he shall be guilty of an offence.
- (9) In any proceedings for an offence under subsection (8) above, it shall, subject to subsection (10) below, be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or a person under his control.
- (10) If in any case the defence provided by subsection (9) above involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless—
 - (a) at least seven clear days before the hearing, and
 - (b) where he has previously appeared before a court in connection with the alleged offence, within one month of his first such appearance,he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.
- (11) Any reference in subsection (10) above to appearing before a court includes a reference to being brought before a court.
- (12) The obligations imposed by subsections (2) to (6) above, except so far as relating to farmed fish, shall not be in force during such period (if any) in each year as may be prescribed by byelaw.
- (13) The obligations imposed by subsections (2) to (6) above on the occupier of a mill shall apply only where the conduit or channel was constructed on or after 18th July 1923.
- (14) Any reference in this section to ensuring that a screen is placed and maintained includes, in a case where the screen takes the form of apparatus the operation of which

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prevents the passage of fish of the descriptions in question, a reference to ensuring that the apparatus is kept in continuous operation.

(15) In this section “by-wash” means a passage through which water flows.]

Textual Amendments

F17 S. 14 substituted (1.1.1999) by 1995 c. 25, s. 105, **Sch. 15 para. 13** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 4**

Modifications etc. (not altering text)

C4 S. 14 extended (1.1.1999) by 1995 c. 25, s. 120(2), **Sch. 23 Pt. I para. 14(5)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 4**
S. 14 modified (1.1.1999) by 1995 c. 25, s. 120(2), **Sch. 23 Pt. I para. 14(6)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 4**

15 Power of water authority to use ^{F18}screens]etc. to limit movements of salmon and trout.

- (1) A water authority, ^{F19}. . .—
- (a) may cause a ^{F18}screen] or ^{F18}screens] of such form and dimensions as they may determine to be placed and maintained, at the expense of the authority, at a suitable place in any watercourse, mill race, cut, leat, conduit or other channel for conveying water for any purpose from any waters frequented by salmon or migratory trout; and
 - (b) may cause any watercourse, mill race, cut, leat, conduit or other channel in which a ^{F18}screen] is placed under this section to be widened or deepened at the expense of the authority so far as may be necessary to compensate for the diminution of any flow of water caused by the placing of the ^{F18}screen], or shall take some other means to prevent the flow of water being prejudicially diminished or otherwise injured.
- (2) If any person—
- (a) injures any such ^{F18}screen]; or
 - (b) removed any such ^{F18}screen] or part of any such ^{F18}screen], except during any period of the year during which under a byelaw ^{F18}screens] need not be maintained; or
 - (c) opens any such ^{F18}screen] improperly; or
 - (d) permits any such ^{F18}screen] to be injured, or removed, except as aforesaid, or improperly opened;
- he shall be guilty of an offence.
- (3) A water authority, ^{F20}. . ., may adopt such means ^{F21}as in its opinion are necessary] for preventing the ingress of salmon or trout into waters in which they or their spawning beds or ova are, from the nature of the channel or other causes, liable to be destroyed.
- (4) Nothing in this section shall—
- (a) affect the liability under this Act of any person to place and maintain a ^{F18}screen]; or
 - (b) authorise a ^{F18}screen] to be so placed or maintained during any period of the year during which under a byelaw ^{F18}screens] need not be maintained; or

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(c) authorise any [^{F18}screen] to be placed or maintained so as to obstruct any conduit or channel used for navigation or in any way interfere with the effective working of any mill;

and nothing in subsection (3) above shall authorise the water authority prejudicially to interfere with water rights used or enjoyed for the purposes of manufacturing or for milling purposes or for drainage or navigation.

[^{F22}(5) In this section “open”, in relation to a screen which consists of apparatus, includes the doing of anything which interrupts, or otherwise interferes with, the operation of the apparatus.]

Textual Amendments

- F18** Word in s. 15 substituted (1.1.1999) by 1995 c. 25, s. 105, **Sch. 15 para. 14(1)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 4**
- F19** Words in s. 15(1) repealed (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 14(2)**(with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F20** Words in s. 15(3) repealed (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 14(3)(a)**(with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F21** Words in s. 15(3) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 14(3)(b)**(with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F22** S. 15(5) added (1.1.1999) by 1995 c. 25, s. 105, **Sch. 15 para. 14(4)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 4**

^{F23}**16 Boxes and cribs in weirs and dams.**

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Textual Amendments

- F23** S. 16 repealed (1.1.2011) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), Sch. 16 para. 5, **22 Pt. 5(B)**; S.I. 2010/298, art. 2, Sch. para. 13

^{F24}**17 Restrictions on taking salmon or trout above or below an obstruction or in mill races.**

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Textual Amendments

- F24** S. 17 repealed (1.1.2011) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), Sch. 16 para. 6, **22 Pt. 5(B)**; S.I. 2010/298, art. 2, Sch. para. 13

18 Provisions supplementary to Part II.

(1) If any person obstructs a person legally authorised whilst he is doing any act authorised by section 9, 10 or 15 above, he shall be guilty of an offence.

^{F25}[(2) The Agency shall not—

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- (a) construct, abolish or alter any fish pass, or abolish or alter any free gap, in pursuance of section 10 above, or
- (b) do any work under section 15 above,
- unless reasonable notice of its intention to do so (specifying the section in question) has been served on the owner and occupier of the dam, fish pass or free gap, watercourse, mill race, cut, leat, conduit or other channel, with a plan and specification of the proposed work; and the Agency shall take into consideration any objections by the owner or occupier, before doing the proposed work.]
- (3) If any injury is caused—
- (a) to any dam by reason of the construction, abolition or alteration of a fish pass or the abolition or alteration of a free gap in pursuance of section 10 above; or
- (b) by anything done by the water authority under section 15 above,
- any person sustaining any loss as a result may recover from the water authority compensation for the injury sustained.
- (4) The amount of any compensation under section 10^{F26} or 15] above shall be settled in case of dispute by a single arbitrator appointed by the Minister.
- (5) In any case in which a water authority are liable to pay compensation under this Part of this Act in respect of injury or damage caused by the making or maintaining of any work, compensation shall not be recoverable unless proceedings for its recovery are instituted within two years from the completion of the work.

Textual Amendments

F25 S. 18(2) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 16** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**.

F26 Words in s. 18 substituted (1.1.2011) by **Marine and Coastal Access Act 2009 (c. 23)**, s. 324(3), **Sch. 16 para. 7**; S.I. 2010/298, **art. 2**, **Sch. para. 13**

Modifications etc. (not altering text)

C5 S. 18(2) extended (1.4.1996) by 1995 c. 25, s. 120(2), **Sch. 23 para. 14(7)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Status:

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Changes to legislation:

There are currently no known outstanding effects for the Salmon and Freshwater Fisheries Act 1975, Part II.