
STATUTORY INSTRUMENTS

2009 No. 3344

The Eels (England and Wales) Regulations 2009

PART 4

Passage of eels

Construction, alteration etc of obstruction

12.—(1) This regulation applies to—

- (a) the construction of a new dam;
- (b) alterations or maintenance made to an existing dam that are likely to affect the passage of eels around, over or through the dam;
- (c) the construction or maintenance of a structure in or near waters that amounts to, or is likely to amount to, an obstruction.

(2) Any person who constructs, alters or maintains a dam or structure must first notify the Agency.

(3) An application for, or variation of, a licence to abstract water or for impounding works under section 24 or 25 of the Water Resources Act 1991⁽¹⁾ is deemed to be notification for the purposes of this regulation.

(4) Failure to comply with paragraph (2) is an offence.

Reporting an obstruction

13.—(1) A responsible person must immediately notify the Agency of any obstruction occurring since the coming into force of these Regulations.

(2) Failure to comply with paragraph (1) is an offence.

Eel passes

14.—(1) This regulation applies where the Agency determines that the passage of eels is impeded or likely to be impeded by—

- (a) a dam or obstruction in or near waters to which these Regulations apply;
- (b) any works notified to the Agency under regulation 12; or
- (c) any obstruction notified to the Agency under regulation 13.

(2) The Agency may, by service of a notice, require a responsible person, at their own cost, to—

- (a) construct an eel pass;
- (b) make alterations to an existing eel or fish pass;
- (c) operate an existing eel pass in accordance with any conditions stated in the notice;
- (d) remove an obstruction; or

- (e) take any other action specified in the notice.
- (3) The notice—
 - (a) may not require anything that interferes with any statutory right of navigation;
 - (b) may require the responsible person to submit plans for an eel pass or for alterations to an existing eel pass or fish pass to the Agency for approval;
 - (c) must give the date by which such plans must be submitted;
 - (d) may require the construction of an eel pass, or alterations to an existing eel or fish pass, to be carried out in accordance with plans approved by the Agency.
- (4) The Agency may, by service of a further notice, require the responsible person—
 - (a) to operate any eel pass constructed or altered, or any fish pass altered, under this regulation in accordance with any conditions stated in the notice;
 - (b) to make any alterations to an eel pass constructed or altered or to any fish pass altered under this regulation.
- (5) Failure to comply with a notice served under paragraph (2) or (4) is an offence.

Maintenance and repair of eel pass

- 15.—(1) A responsible person must, at their own cost, maintain an eel pass in an efficient state.
- (2) Failure to comply with paragraph (1) is an offence.

Damaging or obstructing eel pass

- 16.—(1) A person must not damage, interfere with, obstruct or do anything that impedes the passage of eels through an eel pass.
- (2) Failure to comply with paragraph (1) is an offence.

Eel screens

- 17.—(1) This regulation applies to—
 - (a) any diversion structure capable of abstracting at least 20 cubic metres of water through any one point in any 24-hour period; and
 - (b) any diversion structure returning water to a channel, bed or sea.
- (2) Before 1st January 2015, the Agency may, by service of a notice, require a responsible person to place an eel screen in a diversion structure.
- (3) The notice may specify the dimensions and type of screen and where it is to be placed in the diversion structure.
- (4) On or after 1st January 2015, a responsible person must ensure an eel screen is placed in a diversion structure.
- (5) The Agency may, by service of a notice—
 - (a) exempt the responsible person from the requirement in paragraph (4); or
 - (b) require the responsible person, at their own cost, to alter the dimensions (including mesh size) and the placement of any screen placed under paragraph (4) to those specified in the notice.
- (6) It is an offence to fail to comply with—
 - (a) a notice served under paragraph (2) or (5)(b); or
 - (b) paragraph (4).

By-wash

18.—(1) This regulation applies where an eel screen placed in accordance with regulation 17 is located at a point in the diversion structure other than at the entrance to the conduit or channel by which the water is abstracted.

(2) A responsible person must provide a continuous by-wash immediately upstream from the eel screen which allows eels to return by as direct route as practicable to the waters from which they entered the diversion structure.

(3) Failure to comply with paragraph (2) is an offence.

Eel screens and by-wash

19.—(1) A responsible person must ensure that an eel screen or by-wash—

- (a) does not interfere with any statutory right of navigation;
- (b) is constructed and located, so far as reasonably practicable, so that eels are not injured or damaged by it;
- (c) is maintained in an efficient state.

(2) A person must not damage or interfere with an eel screen or do anything that impedes the free passage of eels through a by-wash.

(3) Failure to comply with paragraph (1) or (2) is an offence.

Action by the Agency

20.—(1) Any action required under this Part may be carried out by the Agency instead of the responsible person—

- (a) in an emergency;
- (b) if the responsible person cannot be ascertained; or
- (c) if the responsible person fails to comply with a notice.

(2) The responsible person is liable for any reasonable costs incurred by the Agency in taking any action under this regulation.

Abstraction and impounding works licences

21.—(1) Notwithstanding sections 24 and 25 of the Water Resources Act 1991, any action required by the Agency under this Part does not constitute an abstraction or impounding works for the purposes of that Act.

(2) A notice served under this Part may disapply any condition relating to the passage of eels in an abstraction or impounding works licence granted under that Act.

Interpretation

22. In this Part a “responsible person” in relation to a dam, diversion structure or obstruction means the owner, occupier or person in charge of the land on which the dam, structure or obstruction lies.