

Status: Point in time view as at 28/04/2022.

Changes to legislation: Environment Act 1995, SCHEDULE 15 is up to date with all changes known to be in force on or before 01 July 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)

SCHEDULES

SCHEDULE 15

Section 105.

MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO FISHERIES

Interpretation

- 1 In this Schedule—
- “local statutory provision” means—
- (a) a provision of a local Act (including an Act confirming a provisional order);
 - (b) a provision of so much of any public general Act as has effect with respect to particular persons or works or with respect to particular provisions falling within any paragraph of this definition;
 - (c) a provision of an instrument made under any provision falling within paragraph (a) or (b) above;
 - (d) a provision of any other instrument which is in the nature of a local enactment;
- “the Minister” means the Minister of Agriculture, Fisheries and Food;
- “subordinate legislation” has the same meaning as in the ^{M1}Interpretation Act 1978;
- “the transfer date” has the same meaning as in Part I of this Act.

Marginal Citations

M1 1978 c. 30.

General modifications of references to the National Rivers Authority

- 2 (1) Subject to—
- (a) the following provisions of this Schedule,
 - (b) the provisions of sections 102 to 104 of this Act, and
 - (c) any repeal made by this Act,
- any provision to which this paragraph applies which contains, or falls to be construed as containing, a reference (however framed and whether or not in relation to an area) to the National Rivers Authority shall have effect on and after the transfer date as if that reference were a reference to the Agency.
- (2) Sub-paragraph (1) above is subject to paragraph 1(2)(a) of Schedule 17 to the ^{M2}Water Act 1989 (references in certain local statutory provisions or subordinate legislation to the area of a particular water authority to have effect as references to the area which, immediately before the transfer date within the meaning of that Act, was the area of that authority for the purposes of their functions relating to fisheries).

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- (3) Subject as mentioned in sub-paragraph (1) above, any provision to which this paragraph applies which contains, or falls to be construed as containing, a reference (however framed) to the whole area in relation to which the National Rivers Authority carries out its functions in relation to fisheries shall have effect on and after the transfer date as if that reference were a reference to the whole area in relation to which the ^{M3}Agency carries out its functions relating to fisheries.
- (4) ^{M4}The provisions to which this paragraph applies are the provisions of—
- (a) [^{F1}the Sea Fisheries Regulation Act 1966;]
 - (b) the Salmon and Freshwater Fisheries Act 1975; and
 - (c) any local statutory provision or subordinate legislation which is in force immediately before the transfer date and—
 - (i) relates to the carrying out by the National Rivers Authority of any function relating to fisheries; or
 - (ii) in the case of subordinate legislation, was made by virtue of any provision to which this paragraph applies ^{F2}....
- (5) The modifications made by this paragraph shall be subject to any power by subordinate legislation to revoke or amend any provision to which this paragraph applies; and, accordingly, any such power, including the powers conferred by section 121 of this Act and paragraph 3 below, shall be exercisable so as to exclude the operation of this paragraph in relation to the provisions in relation to which the power is conferred.

Textual Amendments

- F1** Sch. 15 para. 2(4)(a) repealed (1.4.2010 for W., 1.4.2011 for E.) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), **Sch. 22 Pt. 4**; S.I. 2010/630, art. 3(b) (with arts. 8, 12); S.I. 2011/556, art. 2(2)(o) (with art. 2(3))
- F2** Words in Sch. 15 para. 2(4)(c)(ii) omitted (E.W.) (27.3.2009) by virtue of [The Aquatic Animal Health \(England and Wales\) Regulations 2009 \(S.I. 2009/463\)](#), reg. 1(2), **Sch. 2 para. 9(c)(i)** (with reg. 2(2)) and words in Sch. 15 para. 2(4)(c)(ii) omitted (S.) (27.3.2009) by virtue of [The Aquatic Animal Health \(Scotland\) Regulations 2009 \(S.S.I. 2009/85\)](#), reg. 1(2)(c), **sch. 2 para. 9(c)(i)** (with reg. 2.)

Marginal Citations

- M2** 1989 c. 15.
M3 1975 c. 51.
M4 1966 c. 38.

Power to amend subordinate legislation etc.

- 3 (1) If it appears to the Minister or the Secretary of State to be appropriate to do so for the purposes of, or in consequence of, the coming into force of any provision of this Schedule, he may by order revoke or amend any subordinate legislation.
- (2) An order under this paragraph may—
- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
 - (b) contain such supplemental, consequential and transitional provision as the Minister or the Secretary of State considers appropriate.

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- (3) The power conferred by virtue of this paragraph in relation to subordinate legislation made under any enactment shall be without prejudice to any other power to revoke or amend subordinate legislation made under that enactment, but—
- (a) no requirement imposed with respect to the exercise of any such other power shall apply in relation to any revocation or amendment of that legislation by an order under this paragraph; and
 - (b) the power to make an order under this paragraph shall be exercisable (instead of in accordance with any such requirement) by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

The Diseases of Fish Act 1937

^{F3}4

Textual Amendments

F3 Sch. 15 para. 4 omitted (E.W.) (27.3.2009) by virtue of [The Aquatic Animal Health \(England and Wales\) Regulations 2009 \(S.I. 2009/463\)](#), reg. 1(2), **Sch. 2 para. 9(c)(ii)** (with reg. 2(2)) and Sch. 15 para. 4 omitted (S.) (27.3.2009) by virtue of [The Aquatic Animal Health \(Scotland\) Regulations 2009 \(S.S.I. 2009/85\)](#), reg. 1(2)(c), **sch. 2 para. 9(c)(ii)** (with reg. 2.)

The Sea Fisheries Regulation Act 1966

- 5 [^{F4}(1) The provisions of section 1 of the ^{M5}Sea Fisheries Regulation Act 1966 (establishment of fisheries committees) which provide that an order under that section modifying a previous such order is to be made only on such an application and after such consultation as is mentioned in that section shall not apply to an order under that section which contains a statement that the only provision made by the order is provision which appears to the Minister making the order to be appropriate in consequence of any of the provisions of this Act.
- (2) In section 2(2) of that Act (constitution of local fisheries committee) for the words “the National Rivers Authority” there shall be substituted the words “ the Environment Agency ”.
- (3) In section 18(3) of that Act (provision where a water authority or harbour authority have the powers of a local fisheries committee) for the words “National Rivers Authority” there shall be substituted the words “ Environment Agency) ”.]

Textual Amendments

F4 Sch. 15 para. 5 repealed (1.4.2010 for W., 1.4.2011 for E.) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), **Sch. 22 Pt. 4**; S.I. 2010/630, art. 3(b) (with arts. 8, 12); S.I. 2011/556, art. 2(2)(o) (with art. 2(3))

Commencement Information

II Sch. 15 para. 5 wholly in force at 1.4.1996; Sch. 15 para. 5 not in force at Royal Assent see s. 125(3); Sch. 15 para. 5(1) in force at 1.2.1996 by [S.I. 1996/186](#), **art 2**; Sch. 15 para. 5(2)(3) in force at 1.4.1996 by [S.I. 1996/186](#), **art. 3**

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Marginal Citations

M5 1966 c. 38.

The Sea Fish (Conservation) Act 1967

6 In section 18(1) of the ^{M6}Sea Fish (Conservation) Act 1967 (enforcement of orders relating to salmon and migratory trout)—

- (a) for the words “subsection (6) of section 2 of the Water Resources Act 1991” there shall be substituted the words “ subsection (7) of section 6 of the Environment Act 1995 ”; and
- (b) for the words “the National Rivers Authority” there shall be substituted the words “ the Environment Agency ”.

Marginal Citations

M6 1967 c. 84.

The Salmon and Freshwater Fisheries Act 1975

7 In section 5 of the ^{M7}Salmon and Freshwater Fisheries Act 1975 (prohibition of use of explosives, poisons, electrical devices etc) in subsection (2), the words following paragraph (b) (which require Ministerial approval for the giving of permission to use noxious substances) shall be omitted.

Marginal Citations

M7 1975 c. 51.

F58

Textual Amendments

F5 Sch. 15 para. 8 repealed (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. para. 27(b)

F69

Textual Amendments

F6 Sch. 15 para. 9 repealed (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. para. 27(b)

10 In section 9(1) of that Act (owner or occupier of certain dams or other obstructions to make fish passes of form and dimensions approved by the Minister) for the words “the Minister” there shall be substituted the words “ the Agency ”.

11 (1) In section 10 of that Act, in subsection (1) (power of the National Rivers Authority, with the written consent of the Minister, to construct and maintain fish passes of form and dimensions approved by the Minister)—

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- (a) the words “with the written consent of the Minister,” shall be omitted; and
 - (b) for the words “as the Minister may approve” there shall be substituted the words “ as it may determine ”.
- (2) In subsection (2) of that section (power of the National Rivers Authority, with the consent of the Minister, to alter etc fish passes and free gaps) the words “with the written consent of the Minister,” shall be omitted.
- 12 (1) In section 11 of that Act (Minister’s consents and approvals for fish passes) for subsection (1) there shall be substituted—
- “(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) In subsection (2) of that section (Minister’s power to revoke approval or consent while still provisional)—
- (a) for the words “or consent is provisional, the Minister” there shall be substituted the words “ is provisional, the Agency ”; and
 - (b) for the words from “his intention” onwards there shall be substituted the words “ its intention to do so, revoke the approval ”.
- (3) In subsection (3) of that section (Minister’s power, when revoking provisional approval, to extend period for making fish pass)—
- (a) for the words “the Minister” there shall be substituted the words “ the Agency ”; and
 - (b) for the word “he” there shall be substituted the word “ it ”.
- (4) In subsection (4) of that section (Minister’s power to approve and certify fish pass if he is of the opinion that it is efficient)—
- (a) for the words “The Minister” there shall be substituted the words “ The Agency ”; and
 - (b) for the word “he” there shall be substituted the word “ it ”.
- (5) In subsection (5) of that section (fish passes approved by the Minister deemed to be in conformity with the Act) for the words “the Minister” there shall be substituted the words “ the Agency ”.
- 13 For section 14 of that Act (gratings) there shall be substituted—

“14 Screens.

- (1) This section applies in any case where—

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- (a) by means of any conduit or artificial channel, water is diverted from waters frequented by salmon or migratory trout; and
 - (b) 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—
 - (a) subject to subsection (4) below, prevents the descent of the salmon or migratory trout; 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 conduit or channel.
- (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.

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- (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 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.”
- 14 (1) In section 15 of that Act (power of National Rivers Authority, with the consent of the Minister, to use gratings etc. to limit movements of salmon and trout) for the word “grating” or “gratings”, wherever occurring (including in the side-note), there shall be substituted respectively the word “ screen ” or “ screens ”.
- (2) In subsection (1) of that section (placing of gratings, deepening of channels etc.) the words “with the written consent of the Minister” shall be omitted.
- (3) In subsection (3) of that section (use of such means as the Minister may approve for preventing ingress)—
- (a) the words “with the written consent of the Minister” shall be omitted; and
 - (b) for the words “as the Minister may approve” there shall be substituted the words “ as in its opinion are necessary ”.
- (4) At the end of that section there shall be added—
- “(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.”

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Commencement Information

- I2** Sch. 15 para. 14 wholly in force at 1.1.1999; Sch. 15 para. 14 not in force at Royal Assent see s. 125(3); Sch. 15 para. 14(2)(3) in force at 1.4.1996 by [S.I. 1996/186](#), [art. 3](#) **Sch. 15 para. 14(1)(4)** in force at 1.1.1999 by [S.I. 1995/1983](#), [art. 4](#)

^{F7}15

Textual Amendments

- F7** Sch. 15 para. 15 repealed (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), [Sch. 22 Pt. 5\(B\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. para. 27\(b\)](#)

- 16 In section 18 of that Act (provisions supplementary to Part II) for subsection (2) (notice of application for Ministerial consent to the doing of certain acts to be given to the owner and occupier of the dam etc in question) there shall be substituted—
- “(2) The Agency shall not—
- (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.”
- 17 In section 30 of that Act, the paragraph defining “fish farm” (which is superseded by amendments made by this Schedule) shall be omitted.
- 18 (1) In section 35 of that Act (power to require production of fishing licences) in subsection (3), for the words “the National Rivers Authority” there shall be substituted the words “the Agency”.
- (2) For subsection (4) of that section (definition of “the appropriate office of the National Rivers Authority”) there shall be substituted—
- “(4) In subsection (3) above, “the appropriate office of the Agency” means—
- (a) in a case where the person requiring the production of the licence or other authority specifies a particular office of the Agency for its production, that office; and
- (b) in any other case, any office of the Agency;
- and for the purposes of that subsection where a licence or other authority which any person has been required to produce is sent by post to an office of the Agency that licence or other authority shall be treated as produced by that person at that office.”
- 19 After subsection (1A) of section 39 of that Act (application of Act to River Esk in Scotland) there shall be inserted—
- “(1B) Sections 31 to 34 and 36(2) of this Act shall, subject to the modifications set out in subsection (1C) below, apply throughout the catchment area of

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the River Esk in Scotland but a water bailiff shall exercise his powers under those sections as so applied only in relation to an offence—

- (a) against this Act;
- (b) against section 1 of the ^{M8}Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951; or
- (c) which is deemed to be an offence under this Act by virtue of section 211(6) of the ^{M9}Water Resources Act 1991,

which he has reasonable cause to suspect has been committed in a place to which this Act applies by virtue of subsection (1)(b) above.

(1C) The modifications referred to in subsection (1B) above are—

- (a) references in sections 31 to 34 of this Act to “this Act” shall be construed as including references to section 1 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (as applied to the River Esk by section 21 of that Act); and
- (b) in section 33—
 - (i) references to a justice of the peace shall be construed as including references to a sheriff; and
 - (ii) in subsection (2), the reference to an information on oath shall be construed as including a reference to evidence on oath.”.

Marginal Citations

- M8** 1951 c. 26.
- M9** 1991 c. 57.

20 In section 41(1) of that Act (general definitions) the following definitions shall be inserted at the appropriate places, that is to say—

““fish farm” has the same meaning as in the ^{M10}Diseases of Fish Act 1937;” and

- “(b) “screen” means a grating or other device which, or any apparatus the operation of which, prevents—
 - (a) the passage of salmon or migratory trout, and
 - (b) if the screen is required in connection with a fish farm, the passage of any fish farmed at that fish farm,or any combination of devices or apparatus which, taken together, achieve that result;” and the definition of “grating” shall be omitted.

Marginal Citations

- M10** 1937 c. 33.

21 In subsection (3) of section 43 of that Act (extent of Act to Scotland), after the words “(1A)” there shall be inserted the words “, (1B), (1C)”.

^{F8}22

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Textual Amendments

- F8** Sch. 15 para. 22 repealed (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. para. 27(b)

The Diseases of Fish Act 1983

F9²³

Textual Amendments

- F9** Sch. 15 para. 23 omitted (E.W.) (27.3.2009) by virtue of [The Aquatic Animal Health \(England and Wales\) Regulations 2009 \(S.I. 2009/463\)](#), reg. 1(2), **Sch. 2 para. 9(c)(ii)** (with reg. 2(2)) and Sch. 15 para. 23 omitted (S.) (27.3.2009) by virtue of [The Aquatic Animal Health \(Scotland\) Regulations 2009 \(S.S.I. 2009/85\)](#), reg. 1(2)(c), **sch. 2 para. 9(c)(ii)** (with reg. 2.)

The Salmon Act 1986

24 ^[**F10**In section 37(3) of the ^{M11}Salmon Act 1986 (byelaws requiring consent of the National Rivers Authority) for the words “the National Rivers Authority has” there shall be substituted the words “ the Environment Agency has ”.]

Textual Amendments

- F10** Sch. 15 para. 24 repealed (1.4.2010 for W., 1.4.2011 for E.) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), **Sch. 22 Pt. 4**; S.I. 2010/630, art. 3(b) (with arts. 8, 12); S.I. 2011/556, art. 2(2)(o) (with art. 2(3))

Marginal Citations

- M11** 1986 c. 62.

The Water Resources Act 1991

25 In section 115 of the ^{M12}Water Resources Act 1991, in subsection (1) (power by order to make provision in relation to an area defined by the order for the modification, in relation to the fisheries in that area, of the enactments specified in the paragraphs of that subsection) for paragraph (b) there shall be substituted—
 “(b) of section 142 or 156 below or paragraph 6 or 7 of Schedule 25 to this Act; or”

Marginal Citations

- M12** 1991 c. 57.

26 (1) In paragraph 6 of Schedule 25 to that Act (powers to make byelaws in relation to any part or parts of the area in relation to which the National Rivers Authority carries out its functions in relation to fisheries under Part V of that Act) in sub-paragraphs (1) to (5) for the words “in relation to any part or parts”, in each place where they occur, there shall be substituted the words “ in relation to the whole or any part or parts ”.

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- (2) In sub-paragraph (3)(c) of that paragraph (byelaws for the purpose of determining for the purposes of the ^{M13}Salmon and Freshwater Fisheries Act 1975 the period of the year during which gratings need not be maintained) for the word “gratings” there shall be substituted the word “ screens ”.

Commencement Information

- I3** Sch. 15 para. 26 wholly in force at 1.1.1999; Sch. 15 para. 26 not in force at Royal Assent see s. 125(3); Sch. 15 para. 26(1) in force at 21.9.1995 by [S.I. 1995/1983, art. 3](#); Sch. 15 para. 26(2) in force at 1.1.1999 by [S.I. 1995/1983, art. 4](#)

Marginal Citations

- M13** 1975 c. 51.

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