



# Marine and Coastal Access Act 2009

## 2009 CHAPTER 23

### PART 7

#### FISHERIES

### 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.
- (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—

*Status: Point in time view as at 26/12/2023.*

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- (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

- I1** S. 215 partly in force; s. 215 in force for specified purposes at Royal Assent see s. 324(1)(c)
- I2** 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 ”.
- (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

- I3** S. 216 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 10

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## 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—

“(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—

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### “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

- I4** S. 217 partly in force; s. 217 in force for specified purposes at Royal Assent see s. 324(1)(c)
- I5** S. 217(1) in force at 12.1.2010 for specified purposes by [S.I. 2009/3345](#), [art. 2](#), [Sch. para. 11](#)
- I6** 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](#)
- I7** 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](#)
- I8** 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)—
- at the beginning insert “ Subject to this section ”;
  - 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—
- “(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—
- maintaining, improving or developing fisheries of any fish referred to in section 25(1) above; or
  - 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—
- rod and line; or
  - an historic installation.”
- (4) In subsection (3), for “shall cause” substitute “ may cause ”.

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(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

**I9** S. 218 partly in force; s. 218 in force for specified purposes at Royal Assent see s. 324(1)(c)

**I10** 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.
- (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

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- (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—

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

#### **Commencement Information**

**I11** 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;

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- (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.
- <sup>F1</sup>(9) .....

**Textual Amendments**

**F1** S. 220(9) omitted (12.3.2015) by virtue of [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 4 para. 102(4)** (with [reg. 5\(1\)](#))

**Commencement Information**

**I12** 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—

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#### “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

**I13** S. 221 partly in force; s. 221 in force for specified purposes at Royal Assent see s. 324(1)(c)

**I14** 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.”

#### Commencement Information

**I15** S. 222 partly in force; s. 222 in force for specified purposes at Royal Assent see s. 324(1)(c)

**I16** 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



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## 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

- I17** S. 223(1) in force at 12.1.2010 for specified purposes by S.I. 2009/3345, art. 2, Sch. para. 13
- I18** 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
- I19** S. 223(2)(6) in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 13
- I20** 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) (byelaw-making powers of the Agency), paragraph 6 (byelaws for purposes of fisheries functions) is amended as follows.
- (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

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- (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

**I21** 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—

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“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.

*Status: Point in time view as at 26/12/2023.*

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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**

**I22** 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**

**I23** 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 26/12/2023.*

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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

**I24** 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

**I25** 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**

**I26** 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

I27 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

I28 S. 231 partly in force; s. 231 in force for specified purposes at Royal Assent see s. 324(1)(c)

I29 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>F2</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>F3</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>F3</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>F3</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>F3</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>F3</sup>the appropriate agency] to take such steps;
    - (iii) to pay to [<sup>F3</sup>the appropriate agency] a sum representing reasonable expenses of any such steps taken or to be taken by [<sup>F4</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>F5</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 [<sup>F6</sup>a fine not exceeding £50,000][<sup>F6</sup>a fine, the amount of which may be limited by the regulations];
  - (b) on conviction on indictment, to a fine.

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(8) In this section—

[<sup>F7</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

- F2** 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)
- F3** 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)
- F4** 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)
- F5** 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)
- F6** Words in s. 232(7)(a) substituted (E.W.) (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\), reg. 1\(1\), Sch. 4 para. 93](#) (with reg. 5(2))
- F7** 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

- I30** S. 232 partly in force; s. 232 in force for specified purposes at Royal Assent see s. 324(1)(c)
- I31** 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

- I32** S. 233(1) in force at 12.1.2010 for specified purposes by [S.I. 2009/3345, art. 2, Sch. para. 15](#)
- I33** 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](#)
- I34** S. 233(2) in force at 12.1.2010 by [S.I. 2009/3345, art. 2, Sch. para. 16](#)

**Status:**

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