

Up to date as of 31st March 2015.

Salmon and Freshwater Fisheries Act 1975

1975 CHAPTER 51

An Act to consolidate the Salmon and Freshwater Fisheries Act 1923 and certain other enactments relating to salmon and freshwater fisheries, and to repeal certain obsolete enactments relating to such fisheries

[1st August 1975]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Part I

Prohibition of Certain Modes of Taking or Destroying Fish, etc

1 Prohibited implements

(1) . . . no person shall—

(a) use any of the following instruments, that is to say—

- (i) a firearm within the meaning of the Firearms Act 1968;
- (ii) an otter lath or jack, wire or snare;
- (iii) a crossline or setline;
- (iv) a spear, gaff, [tailer,] stroke-haul, snatch or other like instrument;
- (v) a light;

for the purpose of taking or killing [salmon, trout, eels, lampreys, smelt, shad, freshwater fish and any specified fish in any waters];

- (b) have in his possession any instrument mentioned in paragraph (a) above intending to use it to take or kill [any such fish in any waters]; or
- (c) throw or discharge any stone or other missile for the purpose of taking or killing, or facilitating the taking or killing of [any such fish in any waters].

[(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—

- (a) add any instrument to it; or
- (b) remove any instrument for the time being specified in it.]

(2) If any person contravenes this section, he shall be guilty of an offence unless he proves to the satisfaction of the court that the act was done for the purpose of the preservation or development of a

private fishery and with the previous permission in writing of [the appropriate agency] . . .

(3) In this section—

“crossline” means a fishing line reaching from bank to bank across water and having attached to it one or more lures or baited hooks;

“otter lath or jack” includes any small boat or vessel, board, stick or other instrument, whether used with a hand line, or as auxiliary to a rod and line, or otherwise for the purpose of running out lures, artificial or otherwise;

“setline” means a fishing line left unattended in water and having attached to it one or more lures or baited hooks;

“stroke-haul or snatch” includes any instrument or device, whether used with a rod and line or otherwise, for the purpose of foul hooking any fish.

[(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.]

(4) . . .

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1923, s 1.

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Sub-s (1): words “Subject to subsection (4) below,” in italics repealed by the Marine and Coastal Access Act 2009, ss 215(1), (7)(a), 321, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, paras 10, 27(b).

Sub-s (1): in para (a)(iv) word “tailer,” in square brackets inserted by the Marine and Coastal Access Act 2009, s 215(1), (2)(a).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 10.

Sub-s (1): in para (a) words from “salmon, trout, eels” to “in any waters” in square brackets substituted by the Marine and Coastal Access Act 2009, s 215(1), (2)(b).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 10.

Sub-s (1): in para (b) words “any such fish in any waters” in square brackets substituted by the Marine and Coastal Access Act 2009, s 215(1), (3).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 10.

Sub-s (1): in para (c) words “any such fish in any waters” in square brackets substituted by the Marine and Coastal Access Act 2009, s 215(1), (4).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 10.

Sub-ss (1A), (1B): inserted by the Marine and Coastal Access Act 2009, s 215(1), (5).

Date in force (in so far as it confers power to make regulations or an order): 12 November 2009: see the Marine and Coastal Access Act 2009, s 324(1)(c).

Date in force (for remaining purposes): 12 January 2010: see SI 2009/3345, art 2, Schedule, para 10.

Sub-s (2): words “the appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 128.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings

see art 10, Sch 7 thereto.

Sub-s (2): words omitted repealed by the Water Act 1989, s 190, Sch 27, Pt I.

Sub-s (3A): inserted by the Marine and Coastal Access Act 2009, s 215(1), (6).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 10.

Sub-s (4): repealed by the Marine and Coastal Access Act 2009, ss 215(1), (7)(b), 321, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, paras 10, 27(b).

See Further

See further: the Water Resources Act 1991, s 211(6).

2 Roe, spawning and unclean fish, etc

(1) Subject to subsection (5) below, any person who, for the purpose of fishing for [salmon, trout, eels, lampreys, smelt, shad, freshwater fish or any specified fish in any waters]—

(a) uses any fish roe; or

(b) buys, sells, or exposes for sale, or has in his possession, [any fish roe],

shall be guilty of an offence.

(2) Subject to subsections (3)[, (3A)] and (5) below, any person who—

(a) knowing takes, kills or injures, or attempts to take, kill or injure, any [salmon, trout, lamprey, smelt, shad, freshwater fish or specified fish in any waters] which is unclean or immature; or

(b) buys, sells, or exposes for sale, or has in his possession [any such fish] which is unclean or immature, or any part of any such fish,

shall be guilty of an offence.

(3) Subsection (2) above does not apply to any person who takes a fish accidentally and returns it to the water with the least possible injury.

[(3A) Subsection (2) above does not apply where a person takes an immature freshwater fish in circumstances prescribed by byelaws.]

(4) Subject to subsection (5) below, any person who, except in the exercise of a legal right to take materials from any waters, wilfully disturbs any spawn or spawning fish, or any bed, bank or shallow on which any spawn or spawning fish may be, shall be guilty of an offence.

(5) A person shall not be guilty of an offence under this section in respect of any act, if he does the act for the purpose of the artificial propagation of [fish of any description] or for some scientific purpose or for the purpose of the preservation or development of a private fishery and has obtained the previous permission in writing of [the appropriate agency] . . .

[(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.]

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1923, ss 2-5.

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Sub-s (1): words from “salmon, trout, eels” to “in any waters” in square brackets substituted by the Marine and Coastal Access Act 2009, s 216(1), (2)(a).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 10.

Sub-s (1): in para (b) words “any fish roe” in square brackets substituted by the Marine and Coastal Access Act 2009, s 216(1), (2)(b).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 10.

Sub-s (2): reference to “, (3A)” in square brackets inserted by the Marine and Coastal Access Act 2009, s 216(1), (3)(a).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 10.

Sub-s (2): in para (a) words from “salmon, trout, lamprey” to “in any waters” in square brackets substituted by the Marine and Coastal Access Act 2009, s 216(1), (3)(b).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 10.

Sub-s (2): in para (b) words “any such fish” in square brackets substituted by the Marine and Coastal Access Act 2009, s 216(1), (3)(c).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 10.

Sub-s (3A): inserted by the Marine and Coastal Access Act 2009, s 216(1), (4).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 10.

Sub-s (5): words “fish of any description” in square brackets substituted by the Marine and Coastal Access Act 2009, s 216(1), (5).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 10.

Sub-s (5): words “the appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 128.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (5): words omitted repealed by the Water Act 1989, s 190, Sch 27, Pt I.

Sub-ss (6), (7): inserted by the Marine and Coastal Access Act 2009, s 216(1), (6).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 10.

See Further

See further: the Water Resources Act 1991, s 211(6).

3 . . .

. . .

NOTES

Amendment

Repealed by the Marine and Coastal Access Act 2009, ss 233(1), 321, Sch 16, paras 1, 2, Sch 22, Pt 5(B).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, paras 13, 14.

4 Poisonous matter and polluting effluent

(1) . . . , any person who causes or knowingly permits to flow, or puts or knowingly permits to be put, into any waters containing fish or into any tributaries of waters containing fish, any liquid or solid matter to such an extent as to cause the waters to be poisonous or injurious to fish or the spawning grounds, spawn or food of fish, shall be guilty of an offence.

(2) . . .

(3) Proceedings under this section shall not be instituted [except by the appropriate agency or] by a person who has first obtained a certificate from the Minister that he has a material interest in the waters

alleged to be affected.

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1923, s 8(1), (3).

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Sub-s (1): words "Subject to subsection (2) below" in italics repealed by the Marine and Coastal Access Act 2009, s 321, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 27(b).

Sub-s (2): repealed by the Marine and Coastal Access Act 2009, ss 233(1), (2)(a), 321, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, paras 16, 27(b).

Sub-s (3): words "except by the appropriate agency or" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 129.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

See Further

See further, in relation to entries of matter into controlled waters which do not constitute an offence under this section: the Water Consolidation (Consequential Provisions) Act 1991, s 2, Sch 1, para 30(1).

See further: the Water Resources Act 1991, s 211(6).

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

Transfer of Functions

Functions of the Minister, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

5 Prohibition of use of explosives, poisons or electrical devices and of destruction of dams etc

(1) Subject to [subsections (2) and (2A)] below, no person shall use in or near any waters (including 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]) any explosive substance, any poison or other noxious substance, or any electrical device, with intent thereby to take or destroy fish.

(2) Subsection (1) above shall not apply to the use by a person of any substance or device—

(a) for a scientific purpose, or for the purpose of protecting, improving or replacing stocks of fish; and

(b) with the permission in writing [of the appropriate agency, for which that agency may] [charge a fee];

...

[(2A) Subsection (1) above shall not apply to anything done pursuant to an authorisation granted by the [appropriate agency] under section 27A below.]

(3) No person shall, without lawful excuse, destroy or damage any dam, flood-gate or sluice with

intent thereby to take or destroy fish.

(4) A person who contravenes subsection (1) or (3) above or who, for the purpose of contravening subsection (1) above, has in his possession any explosive or noxious substance or any electrical device, shall be guilty of an offence.

(5) The use of any substance in any waters for a purpose falling within paragraph (a) of subsection (2) above, and with the permission mentioned in paragraph (b) of that subsection, shall not constitute an offence under—

- (a) section 4 above;
- (b) any byelaws made under paragraph 31 of Schedule 3 below;
- [(c) *section 85(1) of the Water Resources Act 1991;*] or
- [(c) regulation 38(1) of the Environmental Permitting (England and Wales) Regulations 2010;]
- (d) section 22(1)(a) of the Rivers (Prevention of Pollution) (Scotland) Act 1951.

(6) . . .

NOTES

Derivation

Sub-ss (1)–(5) derived from the Salmon and Freshwater Fisheries Act 1923, s 9(1)–(3), (5); sub-s (6) derived from the Control of Pollution Act 1974, Sch 3, para 5.

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Sub-s (1): words “subsection (2)” in italics repealed and subsequent words in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 3(1), (2).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (1): words from “to a distance” to “sea is measured” in square brackets substituted by the Fishery Limits Act 1976, s 9(1), Sch 2, para 20.

Sub-s (2): in para (b) words “of the appropriate agency, for which that agency may” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 130(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): in para (b) words “charge a fee” in square brackets inserted by virtue of the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 3(1), (3).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 15(b).

Sub-s (2): final words omitted repealed by the Environment Act 1995, s 105, Sch 15, para 7, Sch 24.

Sub-s (2A): inserted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 3(1), (4).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (2A): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 130(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (5): para (c) substituted, in relation to England and Wales, by SI 2010/675, reg 107, Sch 26, Pt 1, para 4.

Date in force: 6 April 2010 (immediately after the coming into force of the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2009, SI 2009/3381): see SI 2010/675, reg 1(1)(b).

Sub-s (5): para (c) substituted by the Water Consolidation (Consequential Provisions) Act 1991, s 2, Sch 1, para 30(2).

Sub-s (6): repealed by the Water Act 1989, s 190, Sch 27, Part I.

See Further

See further: the Water Resources Act 1991, s 211(6).

Part II
Obstructions to Passage of Fish

6 . . .

[. . .]

NOTES

Amendment

Repealed by the Marine and Coastal Access Act 2009, ss 233(1), 321, Sch 16, paras 1, 4, Sch 22, Pt 5(B).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

7 . . .

. . .

NOTES

Amendment

Repealed by the Marine and Coastal Access Act 2009, ss 233(1), 321, Sch 16, paras 1, 4, Sch 22, Pt 5(B).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

8 . . .

. . .

NOTES

Amendment

Repealed by the Marine and Coastal Access Act 2009, ss 233(1), 321, Sch 16, paras 1, 4, Sch 22, Pt 5(B).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

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 appropriate agency 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 the appropriate 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 appropriate agency] 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.

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1923, s 19(1)–(3), (5).

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Sub-s (1): words “given by the appropriate agency and within” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 131(1), (2)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): words “as the appropriate agency may” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 131(1), (2)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): words “The appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 131(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

See Further

See further: the Water Resources Act 1991, s 211(6).

10 [Power of appropriate agency] to construct and alter fish passes

(1) [The appropriate agency] may, . . . construct and maintain in any dam or in connection with any dam a fish pass of such form and dimensions [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) [The appropriate agency] may, . . . 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 appropriate agency in repairing] the injury, and any such expenses may be recovered [by the appropriate agency in a summary manner].

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1923, s 20(1)–(3).

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Section heading: words “Power of appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 132(1), (5).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-ss (1), (2): words omitted repealed by the Environment Act 1995, s 120, Sch 24.

Sub-s (1): words “The appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 132(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): words “as it may determine” in square brackets substituted by the Environment Act 1995, s 105, Sch 15, para 11(1).

Sub-s (2): words “The appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 132(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): words “incurred by the appropriate agency in repairing” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 132(1), (4)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): words “by the appropriate agency in a summary manner” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 132(1), (4)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

11 Minister’s consents and approvals for fish passes

[(1) Any approval given by the [appropriate agency] to or in relation to a fish pass may, if in giving it the [appropriate agency] indicates that fact, be provisional until the [appropriate 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 [appropriate agency] or

any other person) for the purposes of, or otherwise in connection with, the performance of the [appropriate 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 [appropriate agency] with such information or assistance as it may require for the purpose of performing that function.]

(2) While any such approval [is provisional, the [appropriate agency]] may, after giving the applicant not less than 90 days' notice of [its intention to do so, revoke the approval].

(3) Where [the [appropriate agency]] revokes a provisional approval given to a fish pass forming part of or in connection with a dam or other obstruction, [it] may extend the period within which a fish pass is to be made as part of or in connection with the obstruction.

(4) [The [appropriate agency]] may approve and certify any fish pass if [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 [the [appropriate agency]], and the approval has not been revoked, it shall be deemed to be a fish pass in conformity with this Act, notwithstanding that it was not constructed in the manner and by the person specified in this Act.

NOTES

Derivation

Sub-ss (1)–(3) derived from the Salmon and Freshwater Fisheries Act 1972, s 2(1)–(3); sub-ss (4), (5) derived from the Salmon and Freshwater Fisheries Act 1923, s 21(1), (2).

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Sub-ss (1), (1A): substituted, for sub-s (1) as originally enacted, by the Environment Act 1995, s 105, Sch 15, para 12(1).

Sub-s (1): words “appropriate agency” in square brackets in each place they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 133.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1A): in paras (a), (b) words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 133.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1A): in para (a) words “appropriate agency's” in square brackets substituted by SI 2013/755, art 4, Sch 2, Pt 1, paras 127, 133.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2):: words in square brackets beginning with the words “is provisional” and words “its intention to do so, revoke the approval” in square brackets substituted by the Environment Act 1995, s 105, Sch 15, para 12(2).

Sub-s (2): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 133.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): words in square brackets beginning with the word “the” and word “it” in square brackets substituted by the Environment Act 1995, s 105, Sch 15, para 12(3).

Sub-s (3): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch

2, Pt 1, paras 127, 133.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (4): words in square brackets beginning with the word “The” and word “it” in square brackets substituted by the Environment Act 1995, s 105, Sch 15, para 12(4).

Sub-s (4): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 133.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (5): words in square brackets beginning with the word “the” substituted by the Environment Act 1995, s 105, Sch 15, para 12(5).

Sub-s (5): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 133.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

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 appropriate agency 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.

(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.

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1923, s 22.

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Sub-s (2): words “by the appropriate agency he” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 134.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

See Further

See further: the Water Resources Act 1991, s 211(6).

13 Sluices

(1) Subject to subsection (3) below, unless permission in writing is [granted by the appropriate agency, 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 by the appropriate authority, for cleaning] or repairing the dam or mill or its appurtenances.

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1923, s 18.

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Sub-s (1): words “granted by the appropriate agency, any sluices” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 135(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): words “given by the appropriate authority, for cleaning” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 135(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

See Further

See further: the Water Resources Act 1991, s 211(6).

[14 Screens]

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

- (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 [appropriate 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 [appropriate 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 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.]

NOTES

Derivation

This section, as originally enacted, derived from the Salmon and Freshwater Fisheries Act 1923, s 23(1)–(6).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Substituted by the Environment Act 1995, s 105, Sch 15, para 13; for transitional provision see Sch 23, para 14 thereto.

Date in force: 1 January 1999: see SI 1995/1983, art 4.

Sub-s (2): words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 136.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 136.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

See Further

See further: the Water Resources Act 1991, s 211(6).

15 [Power of appropriate agency] to use [screens] etc to limit movements of salmon and trout

(1) [The appropriate agency—]

- (a) may cause a [screen] or [screens] of such form and dimensions as [it] may determine to be placed and maintained, at the [expense of the appropriate agency, 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 [screen] is placed under this section to be widened or deepened at the [expense of the appropriate agency so far] as may be necessary to compensate for the diminution of any flow of water caused by the placing of the [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 [screen]; or
- (b) removes any such [screen] or part of any such [screen], except during any period of the year during which under a byelaw [screens] need not be maintained; or
- (c) opens any such [screen] improperly; or
- (d) permits any such [screen] to be injured, or removed, except as aforesaid, or improperly opened;

he shall be guilty of an offence.

(3) [The appropriate agency] may adopt such means [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 [screen]; or
- (b) authorise a [screen] to be so placed or maintained during any period of the year during which under a byelaw [screens] need not be maintained; or
- (c) authorise any [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 appropriate agency prejudicially] to interfere with water rights used or enjoyed for the purposes of manufacturing or for milling or for milling purposes or for drainage or navigation.

[(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.]

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1923, s 24(1), (3)–(5).

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Section heading: words “Power of appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 137(1), (5).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Section heading: word “screens” in square brackets substituted by the Environment Act 1995, s 105, Sch 15, para 14(1).

Date in force: 1 January 1999: see SI 1995/1983, art 4.

Sub-s (1): words “The appropriate agency—” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 137(1), (2)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): in paras (a), (b) words “screen” and “screens” in square brackets in each place they occur substituted by the Environment Act 1995, s 105, Sch 15, para 14(1).

Date in force: 1 January 1999: see SI 1995/1983, art 4.

Sub-s (1): in para (a) word “it” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 137(1), (2)(b)(i).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): in para (a) words “expense of the appropriate agency, at a suitable” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 137(1), (2)(b)(ii).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): in para (b) words “expense of the appropriate agency so far” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 137(1), (2)(c).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): words “screen” and “screens” in square brackets in each place they occur substituted by the Environment Act 1995, s 105, Sch 15, para 14(2).

Date in force: 1 January 1999: see SI 1995/1983, art 4.

Sub-s (3): words “The appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 137(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): words “as in its opinion are necessary” in square brackets substituted by the Environment Act 1995, s 105, Sch 15, para 14(3), Sch 24.

Sub-s (4): words “screen” and “screens” in square brackets in each place they occur substituted by the Environment Act 1995, s 105, Sch 15, para 14(3).

Date in force: 1 January 1999: see SI 1995/1983, art 4.

Sub-s (4): words “authorise the appropriate agency prejudicially” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 137(1), (4).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (5): inserted by the Environment Act 1995, s 105, Sch 15, para 14(4).

Date in force: 1 January 1999: see SI 1995/1983, art 4.

See Further

See further: the Water Resources Act 1991, s 211(6).

16 . . .

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NOTES

Amendment

Repealed by the Marine and Coastal Access Act 2009, ss 233(1), 321, Sch 16, paras 1, 5, Sch 22, Pt 5(B).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

17 . . .

. . .

NOTES

Amendment

Repealed by the Marine and Coastal Access Act 2009, ss 233(1), 321, Sch 16, paras 1, 6, Sch 22, Pt 5(B).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, 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.

[(2) The [appropriate 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 [appropriate 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 appropriate agency under] section 15 above,

any person sustaining any loss as a result may recover [from the appropriate agency compensation] for the injury sustained.

(4) The amount of any compensation under section 10 [or 15] above shall be settled in case of dispute by a single arbitrator appointed by the Minister.

(5) In any case [in which the appropriate agency is 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.

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1923, ss 17(4), 19(4), 20(4)–(6), 24(5), (6), 25.

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Sub-s (2): substituted by the Environment Act 1995, s 105, Sch 15, para 16.

Sub-s (2): words “appropriate agency” in square brackets in both places they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 138(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): in para (b) words “done by the appropriate agency under” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 138(1), (3)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): words “from the appropriate agency compensation” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 138(1), (3)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings

see art 10, Sch 7 thereto.

Sub-s (4): words “or 15” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 7.

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (5): words “in which the appropriate agency is liable” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 138(1), (4).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

See Further

See further: the Water Resources Act 1991, s 211(6).

Part III
Times of Fishing and Selling and Exporting Fish

19 . . .

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NOTES

Amendment

Repealed by the Marine and Coastal Access Act 2009, ss 233(1), 321, Sch 16, paras 1, 8, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 15(a), (c).

20 . . .

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NOTES

Amendment

Repealed by the Marine and Coastal Access Act 2009, ss 233(1), 321, Sch 16, paras 1, 8, Sch 22, Pt 5(B).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

21 . . .

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NOTES

Amendment

Repealed by the Marine and Coastal Access Act 2009, ss 233(1), 321, Sch 16, paras 1, 8, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 15(a), (c).

22 . . .

. . .

NOTES

Amendment

Repealed by the Marine and Coastal Access Act 2009, ss 233(1), 321, Sch 16, paras 1, 8, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 15(a), (c).

23 . . .

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NOTES

Amendment

Repealed by the Marine and Coastal Access Act 2009, s 321, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, paras 16, 27(b).

24 . . .

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NOTES

Amendment

Repealed by the Marine and Coastal Access Act 2009, s 321, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 16, 27(b).

Part IV Fishing Licences

25 Licences to fish

(1) *[The [appropriate agency]] shall by means of a system of licensing regulate fishing for salmon and trout . . . and, except so far as excused by the Minister, shall by such means regulate fishing for freshwater fish of any description or eels*

[(1) The [appropriate 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) Subject to the following provisions of this section, a licence granted for the purposes of this

section (hereafter in this Act referred to as a “fishing licence”) shall entitle the person to whom it was granted and no others to use [the means of fishing] specified in the licence to fish for any fish [of such a description, in such area or areas [(or in waters of such description or descriptions)] and for such period as is] so specified.

(3) A fishing licence for the use of [any means of fishing] other than a rod and line to fish for salmon or trout shall also authorise the use of [that means of fishing] for that purpose by the duly authorised servants or agents of the person to whom it was granted, but [subject to the provisions of paragraphs 9 to 13 of Schedule 2 to this Act].

(4) A fishing licence for the use of a rod and line shall entitle the licensee to use as ancillary to that use a . . . landing net.

(5) . . .

(6) . . .

(7) Any person or association entitled to an exclusive right of fishing in any inland waters may be granted a general licence to fish in those waters subject to any conditions agreed [between the appropriate agency and the licensee], and the licence shall entitle the licensee and, subject to paragraph 9 of Schedule 4 below, any person authorised by him in writing, or in the case of an association, by its secretary so to fish.

(8) Schedule 2 to this Act shall have effect with respect to fishing licences.

(9) Any licence in force under any provision of section 61 of the Salmon and Freshwater Fisheries Act 1923 immediately before 29th June 1972 shall be treated as having been granted under the corresponding provision of this section.

[(10) For the purposes of this Part, the [appropriate 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.]

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1972, ss 6(2)–(9), 16(4).

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Sub-s (1): substituted, by subsequent sub-ss (1), (1A), (1B), by the Marine and Coastal Access Act 2009, s 217(1).

Date in force (in so far as it confers power to make regulations or an order): 12 November 2009: see the Marine and Coastal Access Act 2009, s 324(1)(c).

Date in force (for certain purposes): 12 January 2010: see SI 2009/3345, art 2, Schedule, para 11.

- Date in force (for remaining purposes): to be appointed: see the Marine and Coastal Access Act 2009, s 324(3), (5).
- First sub-s (1): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 139(1), (2).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- First sub-s (1): words omitted repealed by the Water Act 1989, s 190, Sch 27, Pt 1.
- Second sub-s (1): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 137, 139(1), (2).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (2): words “the means of fishing” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 9(1), (2).
Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.
- Sub-s (2): words from “of such a” to “period as is” in square brackets substituted by the Water Act 1989, s 141, Sch 17.
- Sub-s (2): words “(or in waters of such description or descriptions)” in square brackets inserted by the Marine and Coastal Access Act 2009, s 217(2).
Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.
- Sub-s (3): words “any means of fishing” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 9(1), (3)(a).
Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.
- Sub-s (3): words “that means of fishing” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 9(1), (3)(b).
Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.
- Sub-s (3): words from “subject to the” to “to this Act” in square brackets substituted by the Salmon Act 1986, s 36(2).
- Sub-s (4): words omitted repealed by the Marine and Coastal Access Act 2009, ss 217(3), 321, Sch 22, Pt 5(B).
Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, paras 11, 27.
- Sub-ss (5), (6): repealed by the Marine and Coastal Access Act 2009, ss 217(4), 321, Sch 22, Pt 5(B).
Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, paras 11, 27(b).
- Sub-s (7): words “between the appropriate agency and the licensee” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 139(1), (3).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-ss (10), (11): inserted by the Marine and Coastal Access Act 2009, s 217(5).
Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.
- Sub-s (10): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 139(1), (4).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Transfer of Functions

Functions of the Minister, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

26 Limitation of fishing licences

(1) [Subject to this] [section, the appropriate agency may] [in relation to any such area or areas as are specified in the order,] by order confirmed by [the appropriate national authority]—

- (a) limit for a period not exceeding ten years from the coming into operation of the order the number of fishing licences [of any description to be issued pursuant to section 25 above in any year in relation to that area or those areas]; and

- (b) provide for the selection of the applicants to whom such licences are to be issued where the number of applications exceeds the number of licences which may be granted.

[(1A) The [appropriate 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—

- (a) maintaining, improving or developing fisheries of any fish referred to in section 25(1) above; or
- (b) protecting the marine or aquatic environment from significant harm.

(1B) The [appropriate agency] may not make an order under subsection (1) above in relation to licences for fishing for fish by—

- (a) rod and line; or
- (b) an historic installation.]

(2) Where [the appropriate national authority] proposes to confirm an order under this section, [that authority] [shall require the appropriate agency to publish] the order and notice of [that authority's] intention to confirm it in such manner as [that authority] may require, together with a notification that within a period specified in the requirement written objections to the order may be made to [that authority].

(3) [The appropriate national authority] shall consider any such objections received by [that authority] within the said period, and—

- (a) if the number of licences as proposed to be limited by the order is less than the number of licences issued in any of the three years preceding the year in which the order is to come into operation; and
- (b) any such objection is made by any person who has during each of the two years preceding that year held a licence of the same description as the licences which it is proposed so to limit in number;

[that authority] [may cause] a local inquiry to be held before confirming the order.

[(4) If it appears to the [appropriate 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 [appropriate agency] may pay that person such amount by way of compensation as it considers appropriate.]

(6) [The appropriate national authority] may with the [consent of the appropriate agency vary] an order submitted to [that authority] under this section before confirming it and may [require the appropriate agency to publish] the terms of the proposed variation in such manner, if any, as [that authority] may specify in the requirement.

(7) An order under this section may be revoked by [the appropriate national authority], or by an order [made by the appropriate agency and] confirmed by [that authority].

(8) . . .

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1972, ss 7, 16(4).

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Sub-s (1): words "Subject to this" in square brackets inserted by virtue of the Marine and Coastal Access Act 2009, s 218(1), (2)(a).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (1): words "section, the appropriate agency may" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 140(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): words from "in relation to" to "in the order," in square brackets inserted by the Water Act 1989, s 141, Sch 17, para 7(1), (6).

Sub-s (1): words "the appropriate national authority" in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 10(1), (2).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (1): in para (a) words from "of any description" to "or those areas" in square brackets substituted by the Marine and Coastal Access Act 2009, s 218(1), (2)(b).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-ss (1A), (1B): inserted by the Marine and Coastal Access Act 2009, s 218(1), (3).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (1A): words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 140(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1B): words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 140(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): words "the appropriate national authority" in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 10(1), (3)(a).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (2): words "that authority" in square brackets in both places they occur substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 10(1), (3)(b).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (2): words "shall require the appropriate agency to publish" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 140(1), (4).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): words "that authority's" in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 10(1), (3)(c).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (2): words "that authority" in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 10(1), (3)(d).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (3): words "The appropriate national authority" in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 10(1), (4)(a).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (3): words "that authority" in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 10(1), (4)(b).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (3): words "that authority" in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 10(1), (4)(c).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (3): words "may cause" in square brackets substituted by the Marine and Coastal Access Act 2009, s 218(1), (4).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.
Sub-s (4): substituted, for sub-ss (4), (5) as originally enacted, by the Marine and Coastal Access Act 2009, s 218(1), (5).
Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.
Sub-s (4): words “appropriate agency” in square brackets in both places they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 140(1), (5).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
Sub-s (6): words “The appropriate national authority” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 10(1), (5)(a).
Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.
Sub-s (6): words “consent of the appropriate agency vary” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 140(1), (6)(a).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
Sub-s (6): words “that authority” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 10(1), (5)(b).
Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.
Sub-s (6): words “require the appropriate agency to publish” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 140(1), (6)(b).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
Sub-s (6): words “that authority” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 10(1), (5)(c).
Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.
Sub-s (7): words “the appropriate national authority” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 10(1), (6)(a).
Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.
Sub-s (7): words “made by the appropriate agency and” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 140(1), (7).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
Sub-s (7): words “that authority” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 10(1), (6)(b).
Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.
Sub-s (8): repealed by the Water Act 1989, s 190, Sch 27, Part I.

See Further

See further: the Water Act 1989, s 141, Sch 17, para 1.

Transfer of Functions

Functions of the Minister, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

27 Unlicensed fishing

[(1)] A person is guilty of an offence if, in any place in which fishing for fish of any description [by any licensable means of fishing] is regulated by a system of licensing, he—

[(a) fishes for or takes fish of that description by that means and—

(i) is not entitled to use that means for that purpose by virtue of a fishing licence, or

(ii) is acting in breach of any condition of such a licence, or

(b) where that licensable means of fishing is an instrument, has that instrument in his possession

with intent to use it for that purpose and is not entitled to use it for that purpose by virtue of a fishing licence].

- [(2) Subsection (1) above does not apply to a person where—
- (a) he has permission under section 25(10) above to take fish of that description in that place by that means, and
 - (b) he is not acting in breach of any condition of that permission.]

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1972, s 8.

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Sub-s (1): numbered as such by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 11(1), (2).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (1): words “by any licensable means of fishing” in square brackets inserted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 11(1), (3).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (1): paras (a), (b) substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 11(1), (4).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (2): inserted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 11(1), (5).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

See Further

See further: the Water Resources Act 1991, s 211(6).

[27A Authorisation of fishing otherwise than by licensable means]

[(1) The [appropriate 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 [appropriate agency] may specify.

(3) An authorisation under this section must be in writing, but subject to that may be in such form as the [appropriate 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 [appropriate 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 [appropriate 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
 - (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 [appropriate agency] may charge a fee for the grant of an authorisation under this section.
- (9) Where the [appropriate agency] determines standard fees for the grant of authorisations of particular descriptions, it must publish them.
- (10) Where—
- (a) the [appropriate agency] has determined a standard fee for the grant of an authorisation of a particular description, but
 - (b) the [appropriate 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.]

NOTES

Extent

This section does not extend to Scotland: see s 43(2), (3).

Amendment

Inserted by the Marine and Coastal Access Act 2009, s 219(2).

Date in force (in so far as it confers power to make regulations or an order): 12 November 2009: see the Marine and Coastal Access Act 2009, s 324(1)(c).

Date in force (for remaining purposes): 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (1): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 141.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 141.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 141.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (5): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 141.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (6): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, Paras 127, 141.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (8): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 141.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (9): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 141.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (10): in paras (a), (b) words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 141.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

[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).]

NOTES

Extent

This section does not extend to Scotland: see s 43(2), (3).

Amendment

Inserted by the Marine and Coastal Access Act 2009, s 219(2).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Part V Administration and Enforcement

Regulation of fisheries etc

< . . . >

NOTES

Amendment

Repealed in part by the Water Act 1989, s 190(3), Sch 27, Pt I; remainder repealed by the Water Consolidation (Consequential Provisions) Act 1991, s 3(1), Sch 3, Pt I.

29 Fish rearing licences

(1) The Minister may grant a licence to carry on the business of artificially propagating or rearing salmon or trout in any waters.

(2) Any such licence may be granted subject to such conditions (if any) as the Minister thinks fit, and may be revoked if he is of opinion that any condition has not been observed.

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1923, s 38(3).

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Transfer of Functions

Functions of the Minister, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

30 . . .

. . .

NOTES

Amendment

Repealed by SI 2014/3303, reg 18.

Date in force: 20 January 2015: see SI 2014/3303, reg 1(2).

Powers of water bailiffs etc

31 Powers of search etc

(1) Any [water bailiff appointed by the appropriate agency and] any person appointed by the Minister—

- (a) may examine any dam, fishing weir, fishing mill dam, fixed engine or obstruction, or any artificial watercourse, and for that purpose enter on any land;
- (b) may examine any instrument or bait which he has reasonable cause to suspect of having been or being used or likely to be used in taking fish . . . or any container which he has reasonable cause to suspect of having been used or likely to be used for holding any such instrument, bait or fish;
- (c) may stop and search any boat or other vessel used in [fishing in the appropriate agency's area] or any vessel which he has reasonable cause to suspect of containing—

- (i) fish . . .;
 - (ii) any such instrument, bait or container as aforesaid;
- (d) may seize any fish [(or a sample of any fish)] and any instrument, vessel, vehicle or other thing liable to be forfeited in pursuance of this Act;
- [(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].

(2) If any person refuses to allow a water bailiff or a person appointed by the Minister to make any entry, search or examination which he is by this section authorised to make, or to seize anything which he is so authorised to seize, or resists or obstructs a water bailiff or person so appointed in any such entry, search, examination or seizure, he shall be guilty of an offence.

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1923, ss 67(1), (2), 72.

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Sub-s (1): words “water bailiff appointed by the appropriate agency and” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 143(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): in para (b) words omitted repealed by the Marine and Coastal Access Act 2009, ss 220(1), (2)(a), 321, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, paras 12, 27(b).

Sub-s (1): in para (c) words “fishing in the appropriate agency’s area” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 143(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): in para (c)(i) words omitted repealed by the Marine and Coastal Access Act 2009, ss 220(1), (2)(b), 321, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, paras 12, 27(b).

Sub-s (1): in para (d) words “(or a sample of any fish)” in square brackets inserted by the Marine and Coastal Access Act 2009, s 220(1), (2)(c).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 12.

Sub-s (1): para (e) inserted by the Marine and Coastal Access Act 2009, s 220(1), (2)(d).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 12.

Modification

Modified by the Salmon Act 1986, s 32(6)(a).

See Further

See further: the Water Resources Act 1991, s 211(6).

Transfer of Functions

Functions of the Minister, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

32 Power to enter lands

- (1) Subject to [subsections (1A) and] (2) below,—
- (a) any water bailiff or other officer of [the appropriate agency, under a special order in writing from that agency, and]
 - (b) any person appointed by the Minister, under an order in writing from him,

may at all reasonable times, for the purpose of preventing any offence against this Act, enter, remain upon and traverse any lands adjoining or near to [any waters] other than—

- (i) a dwelling-house or the curtilage of a dwelling-house, . . .
- (ii) . . .

[(1A) The appropriate agency may make an order under subsection (1)(a) for the purpose of preventing any offence being committed in its area.]

- (2) An order under subsection (1) above shall not remain in force for more than 12 months.

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1923, ss 68, 72.

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Sub-s (1): words “subsections (1A) and” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 144(1), (2)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): in para (a) words from “the appropriate agency,” to “that agency, and” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 144(1), (2)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): words “any waters” in square brackets substituted by the Water Act 1989, s 141, Sch 17, para 7(1), (8).

Sub-s (1): para (ii) and word immediately preceding it repealed by the Marine and Coastal Access Act 2009, ss 220(1), (3), 321, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, paras 12, 27(b).

Sub-s (1A): inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 144(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

See Further

See further: the Water Resources Act 1991, s 211(6).

Transfer of Functions

Functions of the Minister, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

33 Orders and warrants to enter suspected premises

- (1) Where from a statement on oath of a water bailiff or any other [officer of the appropriate agency, or any person] appointed by the Minister, it appears to any justice of the peace that the person making the

statement has good reason to suspect that any offence against this Act is being or is likely to be committed on any land situate on or near to any waters, the justice may by order under his hand authorise him, during a period not exceeding 24 hours to be specified in the order, to enter upon and remain on the land during any hours of the day or night for the purpose of detecting the persons committing the offence.

(2) Any justice of the peace upon an information on oath that there is probable cause to suspect any offence against this Act to have been committed on any premises, [or an offence against this Act to have been committed in the taking of any fish], or any illegal nets or other instruments to be on any premises, by warrant under his hand and seal may authorise any water bailiff or other [officer of the appropriate agency, or any person] appointed by the Minister, or any constable, to enter the premises for the purposes of detecting the offence or the fish, nets or other instruments, at such times of the day or night as are mentioned in the warrant, and to

- [(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].

(3) A warrant under subsection (2) above shall not continue in force for more than [three months].

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1923, ss 69, 70, 72.

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Sub-s (1): words “officer of the appropriate agency, or any person” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 145.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): words from “or an offence” to “of any fish” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 12.

Date in force: 12 January 2010: see SI 2009/3345, Schedule, para 15(a), (d).

Sub-s (2): words “officer of the appropriate agency, or any person” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 145.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): paras (a)–(c) substituted by the Marine and Coastal Access Act 2009, s 220(1), (4).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 12.

Sub-s (3): words “three months” in square brackets substituted by the Marine and Coastal Access Act 2009, s 220(1), (5).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 12.

Modification

Modified by the Salmon Act 1986, s 32(6)(b).

See Further

See further: the Water Resources Act 1991, s 211(6).

Transfer of Functions

Functions of the Minister, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

34 Power to apprehend persons fishing illegally . . .

If any person, . . . , [takes or kills any fish where the taking or killing constitutes an offence under this Act, or is found on or near any waters with intent to take or kill any fish where the taking or killing would constitute an offence under this Act, or having an instrument prohibited by this Act in his possession for the capture of any fish, where the capture would constitute an offence under this Act], a water bailiff or a person appointed by the Minister, with any assistants, may seize him without warrant and put him as soon as may be into the custody of a police officer.

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1923, ss 71, 72.

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Section heading: words omitted repealed by the Marine and Coastal Access Act 2009, ss 220(1), (6)(a), 321, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, paras 12, 27(b).

Words omitted repealed by the Marine and Coastal Access Act 2009, ss 220(1), (6)(b), 321, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, paras 12, 27(b).

Words from “takes or kills” to “under this Act” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 13.

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 15(a), (d).

Transfer of Functions

Functions of the Minister, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

35 Power to require production of fishing licences

(1) [A water bailiff or other officer of the [appropriate agency], or any constable,] may require any person who is fishing, or whom he reasonably suspects of [intending to] fish or [of having recently] fished [in any area], [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,] to produce his licence or other authority to fish and to state his name and address.

[(1A) Without prejudice to subsection (1) above, a water bailiff or other officer of the [appropriate agency] who on any occasion finds a person who he has reason to believe is committing, or has on that occasion committed, a fixed penalty offence, within the meaning of section 37A below, may require that person to state his name and address.]

(2) . . .

(3) If any person required to produce his fishing licence or other authority or to state his name and address fails to do so, he shall be guilty of an offence; but if within seven days after the production of his licence was so required he produces the licence or other authority at [the appropriate office of [the

[appropriate agency]]] he shall not be convicted of an offence under this section for failing to produce it.

[(4) In subsection (3) above, “the appropriate office of the [appropriate agency]” means—

- (a) in a case where the person requiring the production of the licence or other authority specifies a particular office of the [appropriate agency] for its production, that office; and
- (b) in any other case, any office of the [appropriate 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 [appropriate agency] that licence or other authority shall be treated as produced by that person at that office.]

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1972, s 9.

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Sub-s (1): words in square brackets beginning with the words “A water bailiff” substituted by the Environment Act 1995, s 104.

Sub-s (1): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 146.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): words “intending to” in square brackets substituted by the Marine and Coastal Access Act 2009, s 220(1), (7)(a).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 12.

Sub-s (1): words “of having recently” in square brackets substituted by the Marine and Coastal Access Act 2009, s 220(1), (7)(b).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 12.

Sub-s (1): words “in any area” in square brackets inserted by the Water Act 1989, s 141, Sch 17.

Sub-s (1): words from “in circumstances where” to “Wildlife and Countryside Act 1981,” in square brackets inserted by the Marine and Coastal Access Act 2009, s 220(1), (7)(c).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 12.

Sub-s (1A): inserted by the Environment Act 1995, s 104.

Sub-s (1A): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 146.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): repealed by the Marine and Coastal Access Act 2009, ss 220(1), (8), 321, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, paras 12, 27(b).

Sub-s (3): words in square brackets beginning with the words “the appropriate office of” substituted by the Water Act 1989, s 141, Sch 17.

Sub-s (3): words in square brackets beginning with the word “the” substituted by the Environment Act 1995, s 105, Sch 15, para 18(1).

Sub-s (3): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 146.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (4): inserted by the Water Act 1989, s 141, Sch 17, para 7; substituted by the Environment

Act 1995, s 105, Sch 15, para 18(2).

Sub-s (4): words "appropriate agency" in square brackets in each place they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 146.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

See Further

See further: the Water Resources Act 1991, s 211(6).

36 Provisions supplementary to sections 31 to 35

(1) A water bailiff and a person appointed by the Minister shall be deemed to be a constable for the purpose of the enforcement of this Act, or any order or byelaw under it, and to have all the same powers and privileges, and be subject to the same liabilities as a constable duly appointed has or is subject to by virtue of the common law or of any statute.

(2) The production by a water bailiff or a person appointed by the Minister of evidence of his appointment shall be a sufficient warrant for him exercising the powers conferred on him by this Act.

(3) A police constable whose services are provided under paragraph 39(1)(c) of Schedule 3 below shall have all the powers and privileges of a water bailiff.

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1923, ss 54(3)(a), 67(3), (4), 72.

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Modification

Modified by the Salmon Act 1986, s 32(6)(b).

Transfer of Functions

Functions of the Minister, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Offences

37 Prosecution etc of offences

Parts I and II of Schedule 4 to this Act shall have effect with regard to the prosecution and punishment of offences against this Act and the procedure on such prosecutions.

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1972, s 12(2).

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

See Further

See further: the Water Resources Act 1991, s 211(6).

[37A Fixed penalty notices for certain offences]

[(1) Where on any occasion a water bailiff or other officer of the [appropriate agency] finds a person who he has reason to believe is committing, or has on that occasion committed, a fixed penalty offence, he may give to that person a notice (in this section referred to as a “fixed penalty notice”) offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

(2) Where a person is given a fixed penalty notice in respect of a fixed penalty offence—

- (a) no proceedings shall be instituted for that offence before the expiration of the period for paying the fixed penalty; and
- (b) he shall not be convicted of that offence if the fixed penalty is paid before the expiration of that period.

(3) The [appropriate agency] may extend the period for paying the fixed penalty in any particular case if it considers it appropriate to do so in all the circumstances of the case.

(4) If, in any particular case, the [appropriate agency] considers that a fixed penalty notice which has been given ought not to have been given, it may give to the person to whom the fixed penalty notice was given a notice withdrawing the fixed penalty notice; and where notice under this subsection is given—

- (a) the [appropriate agency] shall repay any amount which has been paid by way of fixed penalty in pursuance of the fixed penalty notice; and
- (b) no proceedings shall be instituted or continued against that person for the offence in question.

(5) The amount by which the sums received by the Agency by way of fixed penalties exceed the sums repaid by it under subsection (4)(a) above shall be paid into the Consolidated Fund.

[(5A) The amount by which the sums received by the Natural Resources Body for Wales by way of fixed penalties exceed the sums repaid by it under subsection (4)(a) above shall be paid into the Welsh Consolidated Fund.]

(6) In any proceedings, a certificate purporting to be signed by or on behalf of the Chief Executive of the [appropriate agency] and stating either—

- (a) that payment of a fixed penalty was, or (as the case may be) was not, received by the [appropriate agency] on or before a date specified in the certificate, or
- (b) that an envelope containing an amount sent by post in payment of a fixed penalty was marked as posted on a date specified in the certificate,

shall be received as evidence of the matters so stated and shall be treated, without further proof, as being so signed unless the contrary is shown.

(7) A fixed penalty notice shall give such reasonable particulars of the circumstances alleged to constitute the fixed penalty offence to which the notice relates as are necessary for giving reasonable information of the offence and shall state—

- (a) the monetary amount of the fixed penalty which may be paid;
- (b) the person to whom and the address at which—

- (i) the fixed penalty may be paid, and
 - (ii) any correspondence relating to the fixed penalty notice may be sent;
 - (c) the method or methods by which payment of the fixed penalty may be made;
 - (d) the period for paying the fixed penalty;
 - (e) the consequences of the fixed penalty not being paid before the expiration of that period.
- (8) A fixed penalty notice may also contain such other information relating to, or for the purpose of facilitating, the administration of the fixed penalty system as the [appropriate agency] considers necessary or desirable.

(9) Regulations may—

- (a) make provision with respect to the giving of fixed penalty notices, including, in particular, provision with respect to—
 - (i) the methods by which,
 - (ii) the officers, servants or agents by, to or on whom, and
 - (iii) the places at which,

fixed penalty notices may be given by, or served on behalf of, a water bailiff or other officer of the [appropriate agency];

- (b) prescribe the method or methods by which fixed penalties may be paid;
- (c) make provision for or with respect to the issue of prescribed documents to persons to whom fixed penalty notices are or have been given.

(10) In this section—

“fixed penalty” means a penalty of such amount as may be prescribed (whether by being specified in, or made calculable under, regulations);

“fixed penalty offence” means, subject to subsection (11) below, any offence—

- (a) under this Act,
- (b) under the Salmon Act 1986,
- (c) under or by virtue of regulations or orders made under section 115, 116 or 142 of the Water Resources Act 1991, or
- (d) under section 211(3) of that Act, so far as relating to byelaws made by virtue of paragraph 6 of Schedule 25 to that Act,

which is for the time being prescribed for the purpose;

“the fixed penalty system” means the system implementing this section and regulations made under it;

“the Ministers” means the Secretary of State and the Minister;

“notice” means notice in writing;

“the period for paying”, in relation to any fixed penalty, means such period as may be prescribed for the purpose;

“prescribed” means prescribed by regulations;

“regulations” means regulations made under this section by the Ministers.

(11) The provision that may be made by regulations prescribing fixed penalty offences includes provision for an offence to be a fixed penalty offence—

- (a) only if it is committed in such circumstances or manner as may be prescribed; or
- (b) except if it is committed in such circumstances or manner as may be prescribed.

(12) Regulations may provide for any offence which is a fixed penalty offence to cease to be such an offence.

(13) An offence which, in consequence of regulations made by virtue of subsection (12) above, has ceased to be a fixed penalty offence shall be eligible to be prescribed as such an offence again.

(14) Regulations may—

- (a) make different provision in relation to different cases or classes of case; or
- (b) provide for such exceptions, limitations and conditions, or make such incidental, supplemental, consequential or transitional provision, as the Ministers consider necessary or expedient.

(15) Any power to make regulations under this section shall be exercisable by statutory instrument made by the Ministers; and a statutory instrument containing any such regulations shall be subject to annulment pursuant to a resolution of either House of Parliament.]

NOTES

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Inserted by the Environment Act 1995, s 104.

Sub-s (1): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 147(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 147(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (4): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 147(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (4): in para (a) words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 147(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (5A): inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 147(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (6): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 147(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (6): in para (a) words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 147(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (8): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 147(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (9): in para (a) words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 147(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Part VI Miscellaneous and Supplementary

38 Works below high water mark

(1) Any works proposed to be constructed under this Act on, over or under tidal lands below high-water mark of ordinary spring tides shall be constructed only in accordance with such plans and sections and subject to such restrictions and regulations as the Secretary of State approves in writing before they are commenced.

(2) Any alteration or extension of any such works shall be subject to the like approval.

(3) If any such work is commenced or completed contrary to this section, the Secretary of State may abate and remove it and restore its site to its former condition at the cost of the person who commenced or executed it, or (if he is not the owner of the work) of the owner, and the cost shall be summarily recoverable by the Secretary of State.

(4) This section is in addition to and not in derogation of any local Act.

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1923, s 91.

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

39 Border rivers and Solway Firth

(1) This Act—

(a) does not apply to the River Tweed, but

- (b) [except where otherwise indicated,] applies to so much of the River Esk, with its banks and tributary streams up to their source, as is situated in Scotland,

and in this subsection “the River Tweed” [means the Tweed district (as defined in article 2(1) of the Scotland Act 1998 (River Tweed) Order 2006 (SI 2006/2913))].

[(1A) In the application of this Act, under subsection (1)(b) above, to the River Esk in Scotland, references to this Act in sections 31 to 33 and section 36 shall be construed as including references to sections 1, 3 and 18 to 20 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 as applied to that River by section 21 of that Act.]

[(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 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 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 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.]

(2) Where the minimum size of mesh of nets used for taking salmon prescribed by any provision of this Act or by any byelaw in force in any part of the Solway Firth within England is greater than that which may be lawfully used in the part of the Solway Firth within Scotland, the provision or byelaw shall have effect as if the minimum size of mesh so prescribed in relation to the part of the Solway Firth within England were such as may be so lawfully used as aforesaid in the part of the Solway Firth within Scotland.

(3) The limits of the Solway Firth for the purposes of this section shall be determined by the Minister.

(4) . . .

[(5) Nothing in this section [the Water Resources Act 1991] [or the Water Act 1989] shall authorise [the Agency] to take legal proceedings in Scotland in respect of an offence against this Act.]

NOTES

Derivation

Sub-s (1) derived from the Salmon and Freshwater Fisheries Act 1923, ss 82, 83, the Water Resources Act 1963, s 126(1), (2), (4), and the Criminal Damage Act 1971, s 12(5); sub-ss (2), (3) derived from the Salmon and Freshwater Fisheries Act 1923, s 85; sub-s (4) derived from the

Water Resources Act 1963, s 126(1).

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

Sub-ss (2), (3) do not extend to Scotland: see s 43(3).

Amendment

Sub-s (1): in para (b) words “except where otherwise indicated,” in square brackets inserted by SI 2015/10, reg 18(2).

Date in force: 19 January 2015: see SI 2015/10, reg 1(1)(b).

Sub-s (1): words “means the Tweed district (as defined in article 2(1) of the Scotland Act 1998 (River Tweed) Order 2006 (SI 2006/2913))” in square brackets substituted by SI 2006/2913, art 76(1), Sch 4, Pt 1, para 2.

Date in force: 15 November 2006: see SI 2006/2913, art 1(2).

Subs (1A): inserted by the Salmon Act 1986, s 26(2).

Sub-ss (1B), (1C): inserted by the Environment Act 1995, s 105, Sch 15, para 19.

Sub-s (4): repealed by the Water Act 1989, s 190, Sch 27, Part I.

Sub-s (5): inserted by the Salmon Act 1986, s 41, Sch 4; first words in square brackets inserted by the Water Consolidation (Consequential Provisions) Act 1991, s 2, Sch 1, para 30(3); second words in square brackets inserted by the Water Act 1989, s 141, Sch 17, para 7(10); final words in square brackets substituted by virtue of the Environment Act 1995, s 105, Sch 15, para 2.

Modification

Modified by the Salmon Act 1986, s 32(6)(b).

See Further

See further: the Water Resources Act 1991, s 211(6).

40 River Severn

This Act applies to the dams constructed by the Severn Commissioners under the Severn Navigation Act 1842 and the Severn Navigation Act 1853 and now vested in [Canal & River Trust], and to all fish passes in those dams; and it shall accordingly be [Canal & River Trust's] duty, subject to the provisions of this Act and to section 23 of the Severn Navigation Act 1881 (by virtue of which they have power to stop up the passes with the [agreement of the appropriate agency) to maintain] those passes in an efficient state.

NOTES

Derivation

This section derived from the Salmon and Freshwater Fisheries Act 1923, s 86.

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Words “Canal & River Trust” in square brackets substituted by SI 2012/1659, art 2(1), (3), Sch 1, Sch 3, Pt 1, para 4(1), (2)(a).

Date in force: 2 July 2012: see SI 2012/1659, art 1(2); for transitional provision see art 4 thereof.

Words “Canal & River Trust's” in square brackets substituted by SI 2012/1659, art 2(1), (3), Sch 1, Sch 3, Pt 1, para 4(1), (2)(b).

Date in force: 2 July 2012: see SI 2012/1659, art 1(2); for transitional provision see art 4 thereof.

Words “agreement of the appropriate agency) to maintain” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 148.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

[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.]

NOTES

Extent

This section does not extend to Scotland: see s 43(2), (3).

Amendment

Inserted by the Marine and Coastal Access Act 2009, s 221(1).

Date in force (in so far as it confers power to make regulations or an order): 12 November 2009: see the Marine and Coastal Access Act 2009, s 324(1)(c).

Date in force (for remaining purposes): 12 January 2010: see SI 2009/3345, art 2, Schedule, para 12.

[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.]

NOTES

Extent

This section does not extend to Scotland: see s 43(2), (3).

Amendment

Inserted by the Marine and Coastal Access Act 2009, s 222.

Date in force (in so far as it confers power to make regulations or an order): 12 November 2009: see the Marine and Coastal Access Act 2009, s 324(1)(c).

Date in force (for remaining purposes): 12 January 2010: see SI 2009/3345, art 2, Schedule, para 12.

41 Interpretation

(1) In this Act, unless the context otherwise requires—

[“the Agency” means the Environment Agency;]

["the appropriate agency" means—

- (a) the Agency, except in relation to Wales (within the meaning of the Government of Wales Act 2006); and
- (b) the Natural Resources Body for Wales, in relation to Wales (within that meaning);]

["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;]

["area", in relation to the appropriate agency, means the area in relation to which it carries out its functions relating to fisheries by virtue of—

- (a) section 6(7) of the Environment Act 1995, in the case of the Agency;
- (b) section 6(7A) of that Act, in the case of the Natural Resources Body for Wales;]

"authorised officer" means—

- (a) any officer of [the appropriate agency] . . . ;
- (b) any officer of a market authority acting within the area of the jurisdiction of that authority;
- (c) any officer appointed by the Minister;
- (d) any officer appointed in writing by the Fishmongers Company, or
- (e) any police officer;

"byelaw" means a byelaw under this Act;

"dam" includes any weir or other fixed obstruction used for the purpose of damming up water;

"eels" includes elvers and the fry of eels;

["eels" means any fish of the species *Anguilla anguilla*, and includes elvers and the fry of eels;]

["fish" includes crustaceans and molluscs;]

["fish farm"—

- (a) means a pond, stew, hatchery or other place used for keeping, with a view to their sale or to their transfer to other waters (including another fish farm), live fish, live eggs of fish, or foodstuff of fish, and
- (b) includes any buildings used in connection with a place mentioned in paragraph (a) and the banks and margins of any water in such a place;]

"fishing licence" has the meaning assigned to it by section 25(2) above;

"fishing mill dam" means a dam used or intended to be used partly for the purpose of taking or facilitating the taking of fish, and partly for the purpose of supplying water for milling or other

purposes;

“fishing weir” means any erection, structure or obstruction fixed to the soil either temporarily or permanently, across or partly across a river or branch of a river, and used for the exclusive purpose of taking or facilitating the taking of fish;

“Fishmongers Company” means the wardens and commonalty of the Mystery of Fishmongers in the City of London;

“fixed engine” includes—

- (a) a stake net, bag net, putt or putcher;
- (b) any fixed implement or engine for taking or facilitating the taking of fish;
- (c) any net secured by anchors and any net or other implement for taking fish fixed to the soil, or made stationary in any other way; and
- (d) any net placed or suspended in any inland or tidal waters unattended by the owner or a person duly authorised by the owner to use it for taking [fish], and any engine, device, machine or contrivance, whether floating or otherwise, for placing or suspending such a net or maintaining it in working order or making it stationary;

“foreshore” includes the shore and bed of the sea and of every channel, creek, bay, estuary and navigable river as far up it as the tide flows;

[“freshwater crayfish” means any freshwater decapod crustacean of the Families Astacidae, Cambaridae or Parastacidae;]

[“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;]

“general licence” means a licence granted under section 25(7) above;

. . .

[“historic installation” has the meaning given by section 25 above;]

“immature” in relation to salmon means that the salmon is of a length of less than 12 inches, measured from the tip of the snout to the fork or cleft of the tail, and in relation to any other fish means that the fish is of a length less than such length (if any) as may be prescribed by the byelaws applicable to the water in which the fish is taken;

[“inland water” means any area of inland waters within the meaning of the Water Resources Act 1991;]

[“licensable means of fishing” has the meaning given by section 25 above;]

“market authority” includes any corporation, local authority, body of trustees or other persons having power to maintain or regulate any market;

“migratory trout” means trout which migrate to and from the sea;

“mill” includes any erection for the purpose of developing water power, and “milling” has a corresponding meaning;

“the Minister” means, . . . , the Minister of Agriculture, Fisheries and Food;

“occupier” in relation to a fishery or premises includes any person for the time being in actual possession of the fishery or premises;

“owner” includes any person who is entitled to receive rents from a fishery or premises;

“river” includes a stream;

“rod and line” means single rod and line;

“salmon” means all fish of the salmon species and includes part of a salmon;

[“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;]

[“smelt” means any fish of the species *Osmerus eperlanus*;

“trout” means any fish of the salmon family commonly known as trout, including migratory trout and char, and also includes part of a trout;

“unclean” in relation to any fish means that the fish is about to spawn, or has recently spawned and has not recovered from spawning.

(2) . . .

[(2A) . . .]

(3) Except so far as provision is made by paragraph 13 of Schedule 3 below, nothing in this Act shall be construed as [authorising the appropriate agency or any other] to take or use land or other property belonging to the Crown.

(4) In any byelaw made under an enactment repealed by the Salmon and Freshwater Fisheries Act 1923 “salmon” and “trout” have the meanings assigned to them by subsection (1) above.

NOTES

Derivation

Sub-ss (1), (3), (4) derived from the Salmon and Freshwater Fisheries Act 1923, ss 24(2), 34(2), (4), 78, 90, 92, 93(2); sub-s (2) derived from the Transfer of Functions (Wales) Order 1969, SI 1969/388.

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This section does not extend to Scotland: see s 43(3).

Amendment

Sub-s (1): definition “the Agency” inserted by the Environment Act 1995, s 104(4).
Sub-s (1): definition “the appropriate agency” inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 149(1), (2)(a).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): definition “the appropriate national authority” inserted by the Marine and Coastal Access Act 2009, s 221(2).
Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 12.

Sub-s (1): definition “area” inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 149(1), (2)(a).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): in definition “authorised officer” in para (a) words “the appropriate agency” in square brackets substituted by virtue of SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 149(1), (2)(b).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): in definition “authorised officer” words omitted repealed by the Water Act 1989, ss 141, 190, Sch 17, para 7(11), Sch 27, Part I.

Sub-s (1): definition “eels” substituted by the Marine and Coastal Access Act 2009, s 223(1), (2).
Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 13.

Sub-s (1): definition “fish” inserted by the Marine and Coastal Access Act 2009, s 223(1), (3).
Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (1): definition “fish farm” (as inserted by the Environment Act 1995, s 105, Sch 15, para 20(a)) substituted in relation to England and Wales by SI 2009/463, reg 45, Sch 2, para 3 and in relation to Scotland by SSI 2009/85, reg 48, Sch 2, para 3.
Date in force (in relation to England and Wales): 27 March 2009: see SI 2009/463, reg 1(2)(c).
Date in force (in relation to Scotland): 27 March 2009: see SSI 2009/85, reg 1(2)(c).

Sub-s (1): in definition “fixed engine” in para (d) word “fish” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 14(1), (2).
Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 15(a), (e).

Sub-s (1): definition “freshwater crayfish” inserted by the Marine and Coastal Access Act 2009, s 223(1), (4).
Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (1): definition “freshwater fish” substituted by the Marine and Coastal Access Act 2009, s 223(1), (5).
Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (1): definition “grating” repealed by the Environment Act 1995, ss 105, 120, Sch 15, para 20, Sch 24.
Date in force: 1 January 1999: see SI 1995/1983, art 4.

Sub-s (1): definition “historic installation” inserted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 14(1), (3).
Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (1): definition “inland water” substituted by the Water Consolidation (Consequential Provisions) Act 1991, s 2, Sch 1, para 30(4).

Sub-s (1): definition “licensable means of fishing” inserted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 14(1), (4).
Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Sub-s (1): in definition “the Minister” words omitted repealed by the Water Act 1989, s 190, Sch 27, Part I.

Sub-s (1): definition “screen” inserted by the Environment Act 1995, s 105, Sch 15, para 20(b).
Date in force: 1 January 1999: see SI 1995/1983, art 4.

Sub-s (1): definition “smelt” inserted by the Marine and Coastal Access Act 2009, s 223(1), (6).
Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 13.

Sub-s (2): repealed by the Water Act 1989, s 190, Sch 27, Part I.

Sub-s (2A): inserted by the Water Act 1983, s 11(2), Sch 4, para 4.

Sub-s (2A): repealed by the Water Act 1989, s 190, Sch 27, Part I.

Sub-s (3): words “authorising the appropriate agency or any other” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 149(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

See Further

See further, in relation to the transfer of ministerial functions under this Act: the Water Act 1989, s 141, Sch 17, para 1(3).

Transfer of Functions

Functions of the Minister, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

42 Repeals etc

(1) The enactments specified in Schedule 5 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(2) . . .

(3) In so far as any instrument made or other thing whatsoever done under any enactment repealed by this Act could have been made or done under a corresponding enactment in this Act, it shall not be invalidated by the repeal of that enactment but shall have effect as if made or done under that corresponding enactment; and for the purposes of this provision anything which under section 93(2) of the Salmon and Freshwater Fisheries Act 1923 had effect as if done under any enactment in that Act shall, so far as may be necessary for the continuity of the law, be treated as done under the corresponding enactment in this Act.

(4) Any enactment or other document referring to an enactment repealed by this Act or by the Salmon and Freshwater Fisheries Act 1923 shall, so far as may be necessary for preserving its effect, be construed as referring, or as including a reference, to the corresponding enactment in this Act.

(5) Nothing in this Act shall affect the admissibility in evidence of any instrument made under the Salmon Fishery Act 1865.

(6) Section 254(2)(c) of the Local Government Act 1972 (power of Secretary of State to amend, etc, enactments by order) shall apply to this Act as if it had been passed before 1st April 1974.

(7) . . .

(8) Nothing in this Act shall affect the legal right of any conservators, directors, commissioners, undertakers or other persons to dredge, scour, cleanse or improve any navigable river, canal or other inland navigation.

(9) Nothing in this Act shall be taken as prejudicing the operation of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals).

NOTES

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

Sub-ss (1) (in part), (2)–(9) do not extend to Scotland: see s 43(3).

Amendment

Sub-ss (3), (5), (8) derived from the Salmon and Freshwater Fisheries Act 1923, ss 93(2), 80, 89

respectively.

Sub-s (2): amends the Sea Fish (Conservation) Act 1967.

Sub-s (7): repealed by the Water Act 1989, s 190, Sch 27, Part I.

43 Citation etc

- (1) This Act may be cited as the Salmon and Freshwater Fisheries Act 1975.
- (2) Subject to section 39 above and subsection (3) below, this Act extends only to England and Wales.
- (3) The following provisions of this Act, namely—
section 28(1) and (2) above,
section 39(1)[,(1A)][, (1B), (1C)] [(4) and (5)] above,
section 42(1) above, so far as it relates to the repeal of section 15 of the Salmon and Freshwater Fisheries Act 1972 and section 18 of the Water Act 1973,
paragraph 3 of Schedule 4 below,
extend to Scotland.
- (4) This Act shall come into force on 1st August 1975.

NOTES

Initial Commencement

Specified date

Specified date: 1 August 1975: see sub-s (4) above.

Amendment

Sub-s (3): first words in square brackets inserted and final words in square brackets substituted by the Salmon Act 1986, ss 26(3), 41, Sch 4; second words in square brackets inserted by the Environment Act 1995, s 105, Sch 15, para 21.

SCHEDULE 1

...

NOTES

Amendment

Repealed by the Marine and Coastal Access Act 2009, ss 233(1), 321, Sch 16, paras 1, 15, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, paras 15(a), (f), 27(b).

...

NOTES

Amendment

Repealed by the Marine and Coastal Access Act 2009, ss 233(1), 321, Sch 16, paras 1, 15, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, paras 15(a), (f), 27(b).

...

[FTB

| | Minimum duration |
|--|-----------------------------|
| 1 Salmon close season | 153 days |
| 2 Close season for fishing for salmon with rod and line | 92 days |
| 3 Close season for fishing for salmon or trout with putts and putchers | 242 days |
| 4 Weekly close time for salmon | 42 hours |
| 5 Trout close season | 181 days |
| 6 Close season for fishing for trout with rod and line | 153 days |
| 7 Weekly close time for trout | 42 hours |
| 8 Close season for freshwater fish or rainbow trout [FTE | 93 days |

...

NOTES

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Amendment

Repealed by the Marine and Coastal Access Act 2009, ss 233(1), 321, Sch 16, paras 1, 15, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, paras 15(a), (f), 27(b).

SCHEDULE 2 LICENCES

Section 25

Duty on licences

1

(1) Subject to sub-paragraph (2) below, there shall be payable in respect of a fishing licence a duty fixed in accordance with this Schedule by [the appropriate agency].

(2) [The appropriate agency] may [in such cases as it considers appropriate] grant an exemption from the duty.

2

Different duties may be fixed under paragraph 1 above for [different descriptions of licence] and different classes of licence holder.

3

[The appropriate agency] shall at least one month before fixing or altering a duty for the use of [any

licensable means of fishing] in any part of [its] area, except a duty payable in respect of a temporary licence, publish in one or more newspapers circulating in that part of [its] area notice of [its] intention to do so [and such a notice shall set out the amount of any duty as proposed to be fixed or altered].

4

If during the month immediately following the publication of a notice under paragraph 3 above a written objection to the proposed duty is made to [the appropriate national authority] by any interested [person, the appropriate agency shall] not fix or alter the duty without the approval of [that authority].

5

[The appropriate national authority], with or without a local inquiry, may refuse to approve any duty [submitted by the appropriate agency for] [that authority's] approval under paragraph 4 above or may approve the duty with or without modifications; [and the appropriate agency, if so directed] by [that authority], shall cause notice of any proposed modification to be given in accordance with the direction.

[6

Where the fixing or alteration of any duty takes effect under this Schedule at any time, no alteration or, as the case may be, further alteration of that duty shall so take effect within the period of twelve months beginning with that time.]

7

[The appropriate agency] may grant a temporary licence, that is to say, a licence authorising the use of [any licensable means of fishing] for fishing in circumstances specified in the licence during a period not exceeding 14 days, and may charge in respect of that licence a duty less than the duty fixed for the use of [that means] under the foregoing provisions of this Schedule.

8

There shall be payable in respect of a general licence such sum as may be [agreed by the appropriate agency and] the licensee.

Net etc licences for salmon and trout fishing

[9

(1) A person who uses [any licensable means of fishing] for fishing in an area in relation to which an order under section 26 above limiting the number of licences for fishing [by that means] is in force shall not be treated for the purposes of section 25(3) above as the duly authorised servant or agent of any holder of a licence to use [that means of fishing] unless, at the time that person uses [that means of fishing]—

- (a) his name and address are entered on the licence in accordance with the following provisions of this Schedule; and
- (b) he is not himself the holder of a licence to use [that means of fishing] in that area; and
- (c) he is accompanied by the licensee or has the [consent of the appropriate agency to] his use of [that means of fishing] in the absence of the licensee.

(2) A person who uses [any licensable means of fishing] for fishing in an area in which no such order as is mentioned in sub-paragraph (1) above is in force shall not be treated for the purposes of section 25(3) above as the duly authorised servant or agent of any holder of a licence to use [that means of fishing] unless, at the time that person uses [that means of fishing]—

- (a) his name and address are entered on the licence in accordance with the following provisions of this Schedule; or
 - (b) he is accompanied by the licensee; or
 - (c) he has the [consent of the appropriate agency to] his use of [that means of fishing] otherwise than where there is compliance with paragraph (a) or (b) above.
- (3) [The consent of the appropriate agency] shall not be given under this paragraph except—
- (a) in the case of a consent for the purposes of sub-paragraph (1)(c) above, in relation to a period which [appears to the appropriate agency to be] a period throughout which the licensee will be unable through illness or injury to accompany his servant or agent;
 - (b) in the case of a consent for the purposes of sub-paragraph (2)(c) above, where the giving of the consent [appears to the appropriate agency to be] required by the special circumstances of the case.]

10

The name and address of a servant or agent may be entered on [or removed from] a licence by an [employee of the appropriate agency authorised] to do so or by the licensee or an agent who has been appointed by the licensee to act for the purposes of this paragraph and whose appointment, together with his name and address, has been notified to [the appropriate agency].

11

The date of entry in the licence shall be stated in the licence at the time of the making of the entry, and within twenty-four hours of the making of an entry by a licensee or his agent a copy shall be sent to [the appropriate agency] . . .

12

. . .

13

The number of servants or agents whose names may at any time be entered on a licence shall not exceed twice the number of persons who in the [opinion of the appropriate agency are required] to work at one time [the means of fishing] to which the licence relates or, where the applicant for the licence [notifies the appropriate agency at the time] of the application that he proposes to take part in working [the means of fishing], one less than twice that number.

14

Any person who, with intent to deceive, enters on a licence more names than are permitted by paragraph 13 above or states falsely the date of entry in a licence is guilty of an offence.

[Historic installations]

14A

(1) Where a fishing licence is granted in respect of an historic installation, the [appropriate 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 [appropriate 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.]

Miscellaneous

15

Subject to section 26 above, a fishing licence shall be [granted by the appropriate agency to every] applicant who is at the time of the application not disqualified from holding a fishing licence, on payment of the duty in respect of [the means of fishing] to which the licence relates.

16

A fishing licence shall not confer any right to fish at a place or a time at which the licensee is not otherwise entitled to fish.

17

A fishing licence shall not authorise the erection of any structure or the use of any installation or [other thing] for or in connection with fishing the erection or use of which would otherwise be illegal.

18

The production of a printed copy of a statement purporting to be [issued by the appropriate agency as to] a licence duty fixed and, if it be the case, approved by the Minister under this Schedule shall be prima facie evidence that the licence duty was fixed or approved as there mentioned and of the amount of the duty, and without proof of the handwriting or official position of any person purporting to sign the statement.

NOTES

Derivation

This Schedule derived from the Salmon and Freshwater Fisheries Act 1972, Sch 1.

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This Schedule does not extend to Scotland: see s 43(3).

Amendment

Para 1: in sub-para (1) words "the appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (2)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 1: in sub-para (2) words "The appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (2)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 1: in sub-para (2) words "in such cases as it considers appropriate" in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (2).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, paras 15(a), (g).

Para 2: words "different descriptions of licence" in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (3).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 15(a), (g).

Para 3: words "The appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (3)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 3: words “any licensable means of fishing” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (4).
Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 3: word “its” in square brackets in each place it occurs substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (3)(b).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 3: words from “and such a notice” to “fixed or altered” in square brackets inserted by the Water Act 1989, s 141, Sch 17, para 7(1), (13).

Para 4: words “the appropriate national authority” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (5)(a).
Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 15(a), (g).

Para 4: words “person, the appropriate agency shall” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (4).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 4: words “that authority” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (5)(b).
Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 15(a), (g).

Para 5: words “The appropriate national authority” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (6)(a).
Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 15(a), (g).

Para 5: words “submitted by the appropriate agency for” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (5)(a).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 5: words “that authority’s” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (6)(b).
Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 15(a), (g).

Para 5: words “and the appropriate agency, if so directed” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (5)(b).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 5: words “that authority” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (6)(c).
Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 15(a), (g).

Para 6: substituted by the Water Act 1989, s 141, Sch 17, para 7.

Para 7: words “The appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (6).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 7: words “any licensable means of fishing” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (7)(a).
Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 7: words “that means” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (7)(b).
Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 8: words “agreed by the appropriate agency and” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (7).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 9: substituted by the Salmon Act 1986, s 36(1).

Para 9: in sub-para (1) words “any licensable means of fishing” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (8)(a)(i).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 9: in sub-para (1) words “by that means” in square bracket substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (8)(a)(ii).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 9: in sub-para (1) words “that means of fishing” in square brackets in the first place they occur substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (8)(a)(iii).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 9: in sub-para (1) words “that means of fishing” in square brackets in the final place they occur substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (8)(a)(iv).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 9: in sub-para (1)(b) words “that means of fishing” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (8)(a)(v).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 9: in sub-para (1)(c) words “consent of the appropriate agency to” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (8)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 9: in sub-para (1)(c) words “that means of fishing” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (8)(a)(vi).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 9: in sub-para (2) words “any licensable means of fishing” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (8)(b)(i).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 9: in sub-para (2) words “that means of fishing” in square brackets in the first place they occur substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (8)(b)(ii).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 9: in sub-para (2) words “that means of fishing” in square brackets in the final place they occur substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (8)(b)(iii).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 9: in sub-para (2)(c) words “consent of the appropriate agency to” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (8)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 9: in sub-para (2)(c) words “that means of fishing” in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (8)(b)(iv).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 9: in sub-para (3) words “The consent of the appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (8)(b)(i).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 9: in sub-para (3)(a), (b) words “appears to the appropriate agency to be” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (8)(b)(ii).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 10: words “or removed from” in square brackets inserted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (9).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 15(a), (g).

Para 10: words “employee of the appropriate agency authorised” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (9)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 10: words “the appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (9)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 11: words “the appropriate agency” in square brackets substituted by SI 2013/755, art 4(1),

Sch 2, Pt 1, paras 127, 150(1), (10).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 11: words omitted repealed by the Marine and Coastal Access Act 2009, ss 217(6)(a), 321, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 27(b).

Para 12: repealed by the Marine and Coastal Access Act 2009, ss 217(6)(b), 321, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, Schedule, para 27(b).

Para 13: words "opinion of the appropriate agency are required" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (11)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 13: words "the means of fishing" in square brackets in both places they occur substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (10).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 13: words "notifies the appropriate agency at the time" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (11)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 14A: inserted by the Marine and Coastal Access Act 2009, s 217(7).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 14A: in sub-para (1) words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (12).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 14A: in sub-para (4) words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (12).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 15: words "granted by the appropriate agency to every" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (13).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 15: words "the means of fishing" in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (11).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 17: words "other thing" in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 16(1), (12).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 18: words "issued by the appropriate agency as to" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 150(1), (14).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

See Further

See further: the Water Resources Act 1991, s 211(6).

Transfer of Functions

Functions of the Minister, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

SCHEDULE 3 ADMINISTRATION

Part I Orders

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1–4

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5–6

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7–9

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12

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13

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NOTES

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Amendment

Paras 1–4: repealed by the Water Act 1989, 190(3), Sch 27, Pt I.

Paras 5, 6: repealed by the Water Act 1989, 190(3), Sch 27, Pt I.

Paras 7–9: repealed by the Water Consolidation (Consequential Provisions) Act 1991, s 3(1), Sch 3, Pt I (para 9 substituted with savings, for paras 9–11 as originally enacted, by the Water Act 1989, s 141, Sch 17, para 7(1), (14)(b), Sch 26, Pt VI, para 40).

Para 12: repealed by the Water Act 1989, 190(3), Sch 27, Pt I.

Para 13: repealed by the Water Consolidation (Consequential Provisions) Act 1991, s 3(1), Sch 3, Pt I.

Part II

...

14–36

...

NOTES

Amendment

Paras 14–36: repealed by the Water Consolidation (Consequential Provisions) Act 1991, s 3(1), Sch 3, Pt I.

Part III

Miscellaneous

37, 38

...

39

- (1) Without prejudice to [section 4 of the Water Resources Act 1991], [the appropriate agency—]
- (a) may take legal proceedings in respect of any offence against this Act, or for the enforcement of any provision of this Act or for the protection of [any fisheries] from injury by pollution or otherwise;
 - (b) ...
 - (c) may obtain the services of additional constables under [section 25 of the Police Act 1996].
- (2) Nothing in this paragraph shall authorise anything to be done which may injuriously affect any navigable river, canal, or inland navigation.

NOTES

Derivation

This Part derived from the Salmon and Freshwater Fisheries Act 1923, ss 16(1), 20(7), 38(1)(e), 54(1), (3).

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Amendment

Paras 37, 38: repealed by the Water Consolidation (Consequential Provisions) Act 1991, s 3, Sch 3, Part I.

Para 39: in sub-para (1) words “section 4 of the Water Resources Act 1991” in square brackets substituted by the Water Consolidation (Consequential Provisions) Act 1991, s 2, Sch 1, para 30(6).

Para 39: in sub-para (1) words “the appropriate agency—” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 151.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 39: in sub-para (1)(a) words “any fisheries” in square brackets substituted by the Water Act 1989, s 141, Sch 17, para 7(1), (14).

Para 39: sub-para (1)(b) repealed by the Water Act 1989, s 190, Sch 27, Pt I.

Para 39: in sub-para (1)(c) words “section 25 of the Police Act 1996” in square brackets substituted by the Police Act 1996, s 103, Sch 7, para 26.

Modification

Modified by the Salmon Act 1986, s 32(6)(b).

See Further

See further: the Water Resources Act 1991, s 211(6).

SCHEDULE 4 OFFENCES

Section 37

Part I Prosecution and Punishment

1

(1) Column 2 of the Table below gives a description of the offences against the provisions of this Act specified in column 1 of the Table, and in relation to any such offence—

- (a) column 3 shows whether the offence is punishable summarily (that is to say, on summary conviction) or on indictment or either in one way or the other; and
- (b) column 4 shows the maximum punishment by way of fine or imprisonment which may be imposed on a person convicted of the offence in the way specified in column 3 (that is to say, summarily or on indictment), any reference in column 4 to a period of years or months being construed as a reference to a term of imprisonment for that period.

(2) A person guilty of an offence against any provision of this Act not specified in the Table shall be liable on summary conviction to a fine not exceeding [level 4 on the standard scale].

(3) A person shall be treated as acting together with another for the purposes of the above Table if

- [(a) both are engaged in committing—
 - (i) an offence under section 1 above, other than one committed without any instrument, or
 - (ii) an offence under section 27 above, other than one committed by means of a rod and line (only), or
- (b) one is aiding, abetting, counselling or procuring the commission of such an offence by the other].

TABLE

[FTB

| Provision of Act creating the offence | Description of offence | Mode of prosecution | Punishment |
|---------------------------------------|---|---------------------|--|
| (1) | (2) | (3) | (4) |
| [Section 1 | Fishing with certain instruments for salmon, trout or freshwater fish and possessing certain instruments for fishing for such fish. | (a) Summarily | Three months or the statutory maximum or both |
| | | (b) On indictment | Two years or a fine or both.] |
| Section 4 | Discharging poisonous or injurious matter into waters containing fish or spawn. | (a) Summarily | [The prescribed sum] and £40 for each day on which the offence continues after a conviction thereof. |

| | | | |
|--------------|---|--|--|
| | | (b) On indictment | Two years or a fine or both. |
| Section 5(1) | Using explosives, poisons, noxious substances or electrical devices to take or destroy fish. | (a) Summarily | [A fine.] |
| | | (b) On indictment | Two years or a fine or both. |
| Section 5(3) | Destroying or damaging dams etc, to take or destroy fish. | (a) Summarily | [The prescribed sum.] |
| | | (b) On indictment | Two years or a fine or both. |
| ... | ... | ... | ... |
| ... | ... | ... | ... |
| ... | ... | ... | ... |
| ... | ... | ... | ... |
| ... | ... | ... | ... |
| [Section 27 | Fishing for fish [by licensable means of fishing] otherwise than under the authority of a licence and possessing an unlicensed [licensable] instrument with intent to use it for fishing. | (a) [offence is one alleged to be committed by use or possession of rod and line (only)], summarily. | Level 4 on the standard scale. |
| | | (b) In any other case— | |
| | | (i) summarily | Three months or the statutory maximum or both; |
| | | (ii) on indictment | Two years or a fine or both.] |
| [Section 27B | Unauthorised fishing etc | (a) Summarily | [A fine.] |
| | | (b) On indictment | A fine.] |

[FTE

NOTES

Derivation

Para 1 derived from the Salmon and Freshwater Fisheries Act 1972, s 12(2)–(4), Sch 2.

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

This Part does not extend to Scotland: see s 43(3).

Amendment

Para 1: in sub-para (2) maximum fine increased by the Criminal Law Act 1977, s 31, Sch 6, and converted to a level on the standard scale by virtue of the Criminal Justice Act 1982, ss 37, 46.

Para 1: sub-para (3)(a), (b) substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 17(1), (4).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 15(a), (g).

Para 1: Table: entry relating to "Section 1" substituted by the Salmon Act 1986, s 35.

Para 1: Table: in column 4 references to the prescribed sum in each place they occur substituted by virtue of the Magistrates' Courts Act 1980, s 32(2).

Para 1: Table: in column 4 references to level 4 on the standard scale in each place they occur substituted by virtue of the Criminal Justice Act 1982, s 46.

Para 1: Table: in entry relating to "Section 5(1)" in column 3 words "A fine." in square brackets substituted by SI 2015/664, reg 4(1), Sch 4, Pt 1, para 8(a).

Date in force: 12 March 2015: see SI 2015/664, reg 1(1).

Para 1: Table: entries relating to "Section 19(2)", "Section 19(4)", "Section 19(6)", "Section 19(7)" and "Section 21" repealed by the Marine and Coastal Access Act 2009, ss 233(1), 321, Sch 16, paras 1, 17(1), (2), Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, paras 15(a), (h), 27(b).

Para 1: Table: entry relating to "Section 27" substituted by the Salmon Act 1986, s 35.

Para 1: Table: in entry relating to "Section 27" in column 2 words "by licensable means of fishing" in square brackets inserted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 17(1), (3)(a)(i).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 1: Table: in entry relating to "Section 27" in column 2 word "licensable" in square brackets inserted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 17(1), (3)(a)(ii).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 1: Table: in entry relating to "Section 27" in column 3 words from "instrument in question," to "rod and line" in italics repealed and subsequent words in square brackets substituted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 17(1), (3)(b).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 1: Table: entry relating to "Section 27B" inserted by the Marine and Coastal Access Act 2009, s 219(3).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 1: Table: in entry relating to "Section 27B" in column 3 words "A fine." in square brackets substituted by SI 2015/664, reg 4(1), Sch 4, Pt 1, para 8(b).

Date in force: 12 March 2015: see SI 2015/664, reg 1(1); for transitional provision and savings see reg 5(1).

Part II Procedure

2

Any offence against this Act committed on the sea-coast or at sea beyond the ordinary jurisdiction of a court of summary jurisdiction shall be deemed to have been committed in any place abutting on that sea-coast or adjoining that sea, and may be tried and punished accordingly.

3

Offences against this Act committed in Scotland shall be proceeded against and punished in Scotland.

4

A justice of the peace shall not be disqualified from hearing any case under this Act by reason only of

being a subscriber to any society for the protection of fish, but a justice shall not be entitled to hear any case in respect of an offence committed on his own land or in relation to any fishery of which he is owner or occupier.

5

The court by which a person is convicted of an offence against this Act may order the forfeiture of—

- (a) any fish illegally taken by him or in his possession at the time of the offence;
- (b) any instrument, bait or other thing used in the commission of the offence;
- (c) in the case of an offence of unlawful possession of any substance or device in contravention of section 5 above, that substance or device; and
- (d) on conviction on indictment, any vessel or vehicle used in or in connection with the commission of the offence or in which any substance or device unlawfully in his possession was contained at the time of the offence;

and may order any object so forfeited to be disposed of as the court thinks fit.

6

[Schedule 3 to the Customs and Excise Management Act 1979] (provisions relating to the forfeiture of things seized under that Act) shall apply in relation to any vessel or vehicle liable to forfeiture under paragraph 5 above as it applies in relation to anything liable to forfeiture under that Act, but in its application in relation to any such vessel or vehicle shall have effect subject to the following modifications:—

- [(a) paragraphs 1(2) and 5 shall be omitted;]
- (b) for references to [the appropriate agency; and]
- (c) the court shall not condemn a vehicle or vessel as forfeited under paragraph 6 of that Schedule if satisfied by its owner that that offence was committed without his knowledge and that he could not have reasonably foreseen that it would be used as mentioned in paragraph 5(d) above;

and where notice of claim in respect of anything is duly given in accordance with paragraph 3 and 4 of that Schedule, as applied by this paragraph, the court shall not exercise its power of ordering forfeiture of the vessel or vehicle under paragraph 5 above.

In this paragraph “owner”, in relation to a vessel or vehicle which is the subject of a hire-purchase agreement, means the person in possession of the vehicle under that agreement.

7

An authorised officer may seize any [fish] bought, sold or exposed for sale by, or in the possession for sale of, any person in contravention of this Act.

8

Where any fish or any other thing of a perishable nature is seized as liable to forfeiture under paragraph 5 above, the person by whom it is seized may sell it, and the net proceeds of sale shall be liable to forfeiture in the same manner as the fish or other thing sold, and if and so far as not forfeited shall be paid on demand to the owner; but no person shall be subject to any liability on account of his neglect or failure to exercise the powers conferred on him by this paragraph.

9

If a person is convicted of an offence against this Act . . . , the court may order that any fishing or general licence [or authorisation under section 27A above] held by him shall be forfeited, and that he shall be disqualified from holding and obtaining a fishing or general licence [or authorisation under section 27A above] [for having his name entered on a licence in pursuance of paragraphs 9 to 14 of Schedule 2 to this Act or for fishing (either in a particular area or generally)] by virtue of a fishing or general licence [or authorisation under section 27A above] for such period not exceeding [five years] as the court thinks fit.

10

A person who is prosecuted for an offence against this Act and who is the holder of a fishing or general licence [or authorisation under section 27A above] shall either—

- (a) cause it to be delivered to the [proper officer] of the court not later than the day before the date appointed for the hearing, or
- (b) post it, at such a time that in the ordinary course of post it would be delivered not later than that day, in a letter duly addressed to the [proper officer] and either registered or sent by the recorded delivery service, or
- (c) have it with him at the hearing;

and if he is convicted of the offence and the court makes an order under paragraph 9 above the court shall order the licence [or authorisation under section 27A above] to be surrendered to it; and if the offender has not posted the licence [or authorisation under section 27A above] or caused it to be delivered as aforesaid and does not surrender it as required then he shall be guilty of an offence and the licence [or authorisation under section 27A above] shall be revoked from the time when its surrender was ordered.

11

Where a court orders a fishing or general licence [or authorisation under section 27A above] to be surrendered to it under paragraph 10 above, or where by an order of a court under paragraph 9 above a person is disqualified from holding or obtaining a licence [or authorisation], the court shall—

- (a) send notice of the [order to the appropriate agency, unless that agency prosecuted] in the case;
- (b) if the licence [or authorisation] has been so surrendered, retain it and [forward it to the appropriate agency, who] may dispose of it as they think fit.

12

Where any person is convicted of an offence against this Act, the [proper officer] of the court before whom he is convicted shall, within one month of the date of conviction, forward a certificate of the conviction to [the appropriate agency] . . .

13

A certificate under paragraph 12 above shall be receivable in evidence in all legal proceedings.

[14

In paragraphs 10 and 12 above “proper officer” means—

- (a) in relation to a magistrates’ court, the [designated officer] for the court; and

(b) in relation to the Crown Court, the appropriate officer.]

NOTES

Derivation

Paras 2, 4, 7, 8, 12, 13 derived from the Salmon and Freshwater Fisheries Act 1923, ss 75(1), 76-79; paras 3, 5, 6, 9-11 derived from the Salmon and Freshwater Fisheries Act 1972, ss 12(5)-(7), 13, 15.

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).

Extent

Paras 2, 4-14 do not extend to Scotland: see s 43(3).

Amendment

Para 6: words "Schedule 3 to the Customs and Excise Management Act 1979" in square brackets substituted by the Customs and Excise Management Act 1979, s 177(1), Sch 4, para 12, Table, Pt I.

Para 6: sub-para (a) substituted by the Customs and Excise Management Act 1979, s 177(1), Sch 4, para 12, Table, Pt I.

Para 6: in sub-para (b) words the appropriate agency; and" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 152(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 7: word "fish" in square brackets substituted by the Marine and Coastal Access Act 2009, s 223(1), Sch 16, paras 1, 17(1), (5).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 15(a), (g).

Para 9: words omitted repealed by the Water Act 1989, s 141(5), Sch 17, para 7(15).

Para 9: words "or authorisation under section 27A above" in square brackets in each place they occur inserted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 17(1), (6).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 9: words from "for having his" to "area or generally)" in square brackets substituted by the Water Act 1989, s 141(5), Sch 17, para 7(15).

Para 9: words "five years" in square brackets substituted by the Water Act 1989, s 141(5), Sch 17, para 7(15).

Para 10: words "or authorisation under section 27A above" in square brackets in each place they occur inserted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 17(1), (7).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Paras 10, 12: words "proper officer" in square brackets in each place they occur substituted by the Access to Justice Act 1999, s 90(1), Sch 13, para 86(1), (2).

Date in force: 1 April 2001: see SI 2001/916, art 2(a)(ii).

Para 11: words "or authorisation under section 27A above" in square brackets inserted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 17(1), (8)(a).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 11: words "or authorisation" in square brackets in the first place they occur inserted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 17(1), (8)(b).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 11: in sub-para (a) words "order to the appropriate agency, unless that agency prosecuted" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 152(1), (3)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 11: in sub-para (b) words "or authorisation" in square brackets inserted by the Marine and Coastal Access Act 2009, s 233(1), Sch 16, paras 1, 17(1), (8)(c).

Date in force: 1 January 2011: see SI 2010/298, art 3, Schedule, Pt 2, para 13.

Para 11: in sub-para (b) words "forward it to the appropriate agency, who" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 152(1), (3)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings

see art 10, Sch 7 thereto.

Para 12: words “the appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 127, 152(1), (4).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 12: words omitted repealed by the Water Act 1989, s 190(3), Sch 27, Pt I.

Para 14: inserted by the Access to Justice Act 1999, s 90(1), Sch 13, para 86(1), (3).

Date in force: 1 April 2001: see SI 2001/916, art 2(a)(ii).

Para 14: words “designated officer” in square brackets substituted by the Courts Act 2003, s 109(1), Sch 8, para 178.

Date in force: 1 April 2005: see SI 2005/910, art 3(y); for transitional provisions see SI 2005/911, arts 2–5.

Modification

Modified by the Salmon Act 1986, s 32(6)(b).

See Further

See further: the Water Resources Act 1991, s 211(6).

Reference to “the Commissioners of Customs and Excise” in para 6(b) above shall be read as a reference to “the Commissioners for Her Majesty’s Revenue and Customs” by virtue of the Commissioners for Revenue and Customs Act 2005, s 50(1).

SCHEDULE 5 REPEALS

Section 43

| Chapter | Short Title | Extent of Repeal |
|--------------------|--|---|
| 13 & 14 Geo 5 c 16 | The Salmon and Freshwater Fisheries Act 1923 | The whole Act. |
| 19 & 20 Geo 5 c 39 | The Salmon and Freshwater Fisheries (Amendment) Act 1929 | The whole Act. |
| 25 & 26 Geo 5 c 43 | The Salmon and Freshwater Fisheries Act 1935 | The whole Act. |
| 1963 c 38 | The Water Resources Act 1963 | In section 71(6), the words “the Salmon and Freshwater Fisheries Act 1923 or by”. In section 126(1), the words “the Salmon and Freshwater Fisheries Acts 1923 to 1972, and”. |
| 1965 c 56 | The Compulsory Purchase Act 1965 | In Schedule 6, the entry relating to the Salmon and Freshwater Fisheries Act 1923. |
| 1965 c 68 | The Salmon and Freshwater Fisheries Act 1965 | The whole Act. |

| | | |
|-----------|--|--|
| 1972 c 37 | The Salmon and Freshwater Fisheries Act 1972 | The whole Act. |
| 1973 c 37 | The Water Act 1973 | Section 18. Section 40(4)(c). In Schedule 8, paragraphs 1 to 19 and paragraphs 95 to 97. |
| 1974 c 40 | The Control of Pollution Act 1974 | In Schedule 3, paragraph 5. |

NOTES

Initial Commencement

Specified date

Specified date: 1 August 1975: see s 43(4).