

# MARINE AND COASTAL ACCESS ACT 2009

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## EXPLANATORY NOTES

### SUMMARY AND BACKGROUND

#### **Part 6: Management of Inshore Fisheries**

##### *Chapter 1: Inshore Fisheries and Conservation Authorities*

422. This Part provides for the establishment of inshore fisheries and conservation districts (“IFC districts”) and inshore fisheries and conservation authorities (“IFC authorities”) in England. The main duty of IFC authorities is to manage the exploitation of sea fisheries resources occurring in their districts in a sustainable way. IFC authorities have powers to make and enforce byelaws in pursuance of their main duty. The Sea Fisheries Regulation Act 1966, which relates to the inshore sea fisheries of England and Wales and provides for the establishment of sea fisheries districts and sea fisheries committees, will be repealed.

#### **Inshore fisheries and conservation districts and authorities**

##### *Section 149: Establishment of inshore fisheries and conservation districts*

423. This section provides for the Secretary of State to establish IFC districts. Such districts are to be established by order and will consist of one or more local authority areas that have a seashore. The seaward extent of a district will be determined in the order establishing that district. The term “seashore” is defined in section 186.
424. *Subsection (3)* requires the Secretary of State to consult certain people and organisations before making an order establishing an IFC district.

##### *Section 150: Inshore fisheries and conservation authorities*

425. This section requires there to be an IFC authority for every IFC district and provides that the IFC authority is a committee, or a joint committee (in the case of more than one local authority), of the local authority or authorities falling within the district.

##### *Section 151: Membership and proceedings of IFC authorities*

426. *Subsection (1)* requires that an order establishing an IFC district must provide for the membership of the IFC authority for that district. The membership must comprise members of constituent local authorities, persons appointed by the MMO according to the criteria in *subsection (2)* and other persons.
427. *Subsection (3)* provides for the Secretary of State to amend by order the descriptions of persons appointed as members of an IFC authority. Provision is also made for any consequential amendments to be made to this section as appear to the Secretary of State to be necessary. The order may only add further descriptions of persons appointed as members of an IFC authority, or vary or remove descriptions so added. The descriptions currently set out in *subsection (2)* may not be varied or removed.

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428. *Subsections (4) and (5)* require the order establishing an IFC district to specify the total number of members of the IFC authority for the district. The order must also specify the number of members to be appointed from each constituent local authority and the number of members appointed by the MMO. The order must also set out the number of members to be appointed in the category “other persons” and by whom they are to be appointed.
429. An order establishing an IFC district may include the provision set out in *subsection (6)* as to the membership and procedures of the IFC authority for that district, for example provision as to how the chair of the IFC authority is to be appointed.
430. *Subsection (7)* lists certain enactments that concern the proceedings of local authority committees or joint committees. These will apply to an IFC authority subject to any provision made by the order establishing the district.
431. *Subsection (8)* provides definitions for the terms “the fishing community” and “marine environmental matters”.
432. *Subsection (9)* provides for the reference to the MMO in *subsection (1)(b)* to be read as the Secretary of State until the MMO comes into being, at which point anybody appointed to the IFC authority by the Secretary of State would be treated as if appointed by the MMO.

***Section 152: Amendment or revocation of orders under section 149***

433. This section allows the Secretary of State to amend or revoke an order that established an IFC district. Certain persons and organisations must be consulted before an order is amended or revoked, including any likely to be affected by the amendment or revocation.

**Main duties**

***Section 153: Management of inshore fisheries***

434. This section places a duty on each IFC authority to manage the exploitation of sea fisheries resources in its district. *Subsection (2)* sets out the key elements of each IFC authority’s duty. These are: seeking to ensure sustainable exploitation of fisheries; balancing socio-economic benefits with the protection of, or the promotion of the recovery of, the marine environment from past and present exploitation; taking steps to contribute to the achievement of sustainable development; and balancing the needs of all persons exploiting the district’s fisheries. Where, at a particular site, the marine environment needs to recover from past fisheries exploitation as well as to be protected from present fisheries exploitation, both of those needs will have to be balanced against the socio-economic benefits of fishing.
435. IFC authorities will be able to apply precautionary measures and use an ecosystem-based approach in order to fulfil their main duty. Precautionary measures in this context means that the absence of adequate scientific information should not be used as a reason for postponing or failing to take management measures to conserve target species, associated or dependent species and non-target species and their environment. The ecosystem-based approach in this context means that the capacity of the aquatic ecosystems to produce food, revenues, employment and, more generally, other essential services and livelihood, is maintained indefinitely for the benefit of present and future generations.
436. *Subsections (3) to (9)* make provision in respect of guidance issued by the Secretary of State to IFC authorities. The Secretary of State must give guidance to IFC authorities as to how they are to contribute to the achievement of sustainable development and must publish such guidance. The Secretary of State also may give guidance as to the performance of IFC authorities’ duty under *subsection (1)*. Each IFC authority,

in performing its duty, must have regard to any guidance issued by the Secretary of State. Before issuing such guidance, the Secretary of State must consult IFC authorities and other relevant people and organisations and must take into account IFC authority functions, the functions of other bodies exercisable in the IFC district and the resources available to IFC authorities.

437. The term *sea fisheries resources* is defined at *subsections (10) and (11)*. Certain fish are specifically excluded from that term and therefore from IFC authority competence because the Environment Agency is responsible for regulating fisheries for those kinds of fish. However, IFC authorities are still able to regulate the exploitation of sea fisheries resources in order to provide protection for the fish listed in *subsection (11)*.
438. The activities to which the main duties and powers of an IFC authority apply are set out at *subsection (12)*. These activities include activities relating to cultivated fisheries such as aquaculture and mariculture as well as all recreational fishing activities. Mariculture is the cultivation of marine organisms in their natural habitats, usually for commercial purposes.

#### ***Section 154: Protection of marine conservation zones***

439. Each IFC authority must exercise its powers to seek to ensure that the conservation objectives of any MCZ in its district are furthered. This requirement will not be affected by anything set out in section 153 about how IFC authorities perform their duty.

### **Byelaws**

#### ***Section 155: Power to make byelaws***

440. This section provides a power for an IFC authority to make byelaws which must be observed in its district. Byelaws, apart from emergency byelaws, do not take effect until confirmed by the Secretary of State. The Secretary of State may cause a local inquiry to be held before confirming a byelaw. A byelaw may be confirmed with modifications, which must be agreed with the IFC authority that made it.

#### ***Section 156: Provision that may be made by byelaw***

441. This section sets out a non-exhaustive list of the types of activities for which IFC authorities may make byelaws (including emergency byelaws) to manage sea fisheries resources in their district.
442. *Subsection (3)* enables byelaws to be made prohibiting or restricting the exploitation of sea fisheries resources in specified areas or periods or limiting the amount of resources that may be exploited or the amount of time a person or vessel may spend exploiting fisheries resources in a specified period.
443. *Subsection (4)* allows IFC authorities to prohibit or restrict the exploitation of sea fisheries resources within their district without a permit. IFC authorities will be able to recover the costs of administering and enforcing a permit scheme, attach conditions to permits and limit the number of permits they issue under a particular scheme.
444. *Subsection (5)* allows IFC authorities to prohibit or restrict the use of vessels of specified descriptions and any method of exploiting sea fisheries resources. The possession, use and transportation of specified items or types of items used in the exploitation of sea fisheries resources may also be prohibited or restricted. This would enable an IFC authority to require the use of a particular method of sea fishing or an item used in sea fishing (for example to reduce by-catch) by means of a prohibition on the use of other methods and items.
445. *Subsection (6)* provides for the protection and regulation of shellfisheries including, but not limited to, requirements for shellfish to be re-deposited in specified places and for the protection of shellfish laid down for breeding purposes and culch, which is the

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substrate/material on which the spat or young of shellfish may attach and grow. This subsection also enables a district of oyster cultivation to be established, so that the IFC authority may prohibit the sale of oysters between certain dates, and allows IFC authorities to disapply the defence concerning the taking and sale of certain crabs and lobsters as set out in section 17(2) of the Sea Fisheries (Shellfish) Act 1967.

446. *Subsection (7)* allows IFC authorities to make provision in byelaws for monitoring the exploitation of sea fisheries resources. This includes requirements as to the fitting of particular equipment, the carriage of onboard observers and the marking or tagging of items used in the exploitation of sea fisheries resources.
447. *Subsection (8)* allows IFC authorities to require people involved in the exploitation of sea fisheries resources in their district to provide them with specified information so that it is an offence if certain information is not provided.

### ***Section 157: Emergency byelaws***

448. This section allows an IFC authority to make an emergency byelaw which takes effect without first being confirmed by the Secretary of State. *Subsection (2)* prescribes the circumstances in which an emergency byelaw may be made.
449. *Subsection (3)* provides when an emergency byelaw will come into force and for how long, subject to a maximum of 12 months duration. *Subsections (4) and (5)* allow an IFC authority to extend an emergency byelaw once for a period of up to 6 months with the written approval of the Secretary of State. That approval may only be given in accordance with the terms set out at *subsection (6)*.

### ***Section 158: Byelaws: supplementary provision***

450. *Subsections (1) and (2)* clarify that byelaw-making powers include powers to make byelaws for different cases or circumstances and that a byelaw may cease to have effect after a specified period.
451. *Subsection (3)* provides for IFC authorities to introduce a byelaw that prohibits, restricts, or otherwise interferes with the exercise of any right of a several or private fishery as set out in *subsection (4)*. If the byelaw would prohibit, or significantly restrict or interfere with, the exercise of that right, IFC authorities will require consent from the person who enjoys the right of private fishery, unless part or the whole of that fishery falls within an MCZ, a European Marine Site, a Site of Special Scientific Interest (SSSI), a Ramsar site or a National Nature Reserve (NNR).

### ***Section 159: Power of Secretary of State to amend or revoke byelaws***

452. This section allows the Secretary of State to revoke or restrict the application of any byelaw made by an IFC authority where it appears to the Secretary of State that the byelaw is unnecessary, inadequate or disproportionate. Before doing so the Secretary of State must follow the requirements of *subsection (2)* about notifying the IFC authority and considering objections.

### ***Section 160: Byelaws: procedure***

453. This section allows the Secretary of State to make regulations about the procedure to be followed by an IFC authority when making byelaws (including emergency byelaws). This section also enables regulations to make provision about the procedure to be followed by an eligible body in relation to byelaws, where an IFC authority has delegated functions relating to byelaws (see section 167).

### ***Section 161: Inquiries***

454. This section applies, with modifications, subsections (2) to (5) of section 250 of the Local Government Act 1972 to any inquiry under section 155(5) or 159(3).

***Section 162: Evidence of byelaws***

455. This section provides that the production of a signed copy of a byelaw is conclusive evidence of the byelaw. An emergency byelaw must be signed by an officer or member of the relevant IFC authority. Other byelaws must be signed by or on behalf of the Secretary of State.

**Offences**

***Section 163: Offences***

456. This section establishes offences and penalties. A person is guilty of an offence if he contravenes any byelaw made by an IFC authority. Where a vessel is used in contravention of a byelaw the master, owner and charterer (if any) will each be guilty of an offence. A person guilty of an offence under subsection (1) is liable upon summary conviction to a maximum fine of £50,000. *Subsection (4)* ensures that magistrates' courts have jurisdiction over byelaw offences that are committed at sea, by treating them as having been committed in any part of England and Wales.

***Section 164: Powers of court following conviction***

457. This section provides that where a person is convicted of an offence, the court may order forfeiture of any fishing gear used in the commission of the offence or any fish in respect of which an offence was committed. If the fish are in a container, the container may also be forfeited. As an alternative, the court may order that person to pay a sum of money representing the value of the fishing gear or fish. Where there has been a breach of the conditions of a permit granted by an IFC authority, the court may suspend the permit or disqualify the person from holding or obtaining any IFC authority permit relating to any activity to which that permit related. A permit may be suspended or disqualified for such period as the court sees fit.

**Enforcement**

***Section 165: Inshore fisheries and conservation officers***

458. This section provides that inshore fisheries and conservation officers ("IFC officers") may be appointed by IFC authorities. Such appointments may be subject to any limitations specified by the IFC authority making that appointment.

***Section 166: Powers of IFC officers***

459. Enforcement powers are listed in Part 8 of the Act. This section sets out the powers from that list which are available to an IFC officer and the legislation in respect of which they may be exercised. The geographical area in relation to which an IFC officer may exercise his enforcement powers is set out at *subsection (4)*.
460. *Subsections (5) to (8)* make provision for an IFC officer to engage in hot pursuit of a vessel or vehicle from the IFC district for which he has been appointed. Hot pursuit applies only in relation to any vessel or vehicle in Scotland or the Scottish Zone which has been pursued there in accordance with *subsection (5)*.
461. This section makes it clear that IFC officers may enforce byelaws made for the district under section 155, whether or not the byelaws are made by the IFC authority for the district. This covers the situation where an IFC authority has delegated byelaw-making powers to an eligible body.
462. *Subsection (2)* allows the Secretary of State to amend *subsection (1)* of this section (the list of legislation in respect of which enforcement powers may be exercised).

## **Power to delegate functions**

### ***Section 167: Power to enter into agreements with eligible bodies***

463. **Section 167** gives an IFC authority the power, with the approval of the Secretary of State, to make an agreement with an “eligible body”, authorising the body to perform any of the IFC authority’s functions on its behalf. An agreement may cover either the whole of an IFC district or specified parts of it. The Secretary of State may approve an agreement unconditionally or subject to conditions specified in the approval.
464. The power could not be used to authorise an eligible body to perform functions which would be incompatible with the purposes for which the body was established, or functions relating to the accounts of an IFC authority. Any agreement made under this power would not prevent the IFC authority from performing a function to which the agreement relates. The maximum period for which an agreement could authorise an eligible body to perform a function would be 20 years.

### ***Section 168: Eligible bodies***

465. **Section 168** provides for a list of those bodies with which an IFC authority may enter into an agreement for the delegation of functions of the authority. “Eligible bodies” are neighbouring IFC authorities and the Environment Agency. The section also provides an order-making power to enable the Secretary of State to add public bodies that have an inshore marine function to the list of eligible bodies, or to remove bodies from that list.

### ***Section 169: Variation, review and cancellation of agreements under section 167***

466. **Section 169** provides for the review, variation and cancellation of agreements made between IFC authorities and eligible bodies. The Secretary of State will be required to review all agreements at least every five years, and may cancel agreements if appropriate in the light of such reviews. Agreements may only be varied with the consent of the IFC authority and the eligible body and with the approval of the Secretary of State. The original approval given by the Secretary of State to the agreement could disapply these provisions.

### ***Section 170: Agreements under section 167: particular powers***

467. **Section 170** makes provision for cases where a body that is authorised to carry out a function under an agreement is already involved with the function in some way: for example, where the body is a consultee or is required to give its consent to the exercise of the function, or where the body may already exercise the function jointly with the IFC authority delegating the function. The section provides that an agreement could still be entered into with that body.
468. The section also provides that the lack of a specific power to carry out a function will not prevent a body performing the function if that body has been authorised to do so under an agreement. It also provides that the body may delegate performance to a committee, sub-committee, member, officer or employee (except if the agreement itself prohibits this). However, delegation of the performance of the function to any other body or person is not permitted. In addition, the section enables agreements to provide that the performance of a function is subject to the fulfilment of conditions, and for payments to be made in respect of the performance of the function.

### ***Section 171: Supplementary provisions with respect to agreements under section 167***

469. **Section 171** requires agreements, and approvals for them, to be in writing and provides for agreements to be published in such a way as to bring them to the attention of persons likely to be affected. It also provides that no power of a Minister of the Crown (under

the Act or any other legislation) to give directions to a statutory body may be used to require that body to enter into an agreement or to prohibit it from doing so.

470. In addition, this section provides that Schedule 15 to the Deregulation and Contracting Out Act 1994 (relating to the disclosure of information) applies where bodies are exercising functions by virtue of an agreement. This is to make clear to each contracting body how to handle confidential information and the situations where sharing of information between the contracting bodies is permitted.

### **Other powers and duties of IFC authorities**

#### ***Section 172: Development, etc of fisheries***

471. This section provides for an IFC authority to take such measures as it considers necessary in order to develop any fishery for sea fisheries resources in its district. This includes the power to stock or re-stock a public fishery for any sea fisheries resources.

#### ***Section 173: Provision of services by IFC authorities***

472. This section provides for IFC authorities to enter into arrangements, with or without charge, with another person or body for the provision of services by the IFC authority to that person or body. This may include an IFC authority making arrangements with the holder of a right of private fishery in connection with the enforcement of that right.

#### ***Section 174: Duty of co-operation***

473. This section requires an IFC authority to take such steps as it considers appropriate to co-operate with certain other public organisations that have functions relating to the regulation and enforcement of activities in any part of the sea within the IFC district (for example, the MMO) and to co-operate with other IFC authorities that share a boundary with the IFC authority.

#### ***Section 175: Information***

474. This section requires IFC authorities to collect certain information and to provide certain information to the Secretary of State.

#### ***Section 176: Accounts***

475. IFC authorities must keep proper accounts and proper records in relation to those accounts. The accounts of an IFC authority comprising more than one constituent council must be made up yearly to 31st March.

#### ***Section 177: Annual plan***

476. This section requires every IFC authority to make and publish a plan setting out the authority's main objectives and priorities for the year. The plan must be published before the beginning of each financial year. An IFC authority must send a copy of its plan to the Secretary of State.

#### ***Section 178: Annual report***

477. This section requires every IFC authority, as soon as is reasonably practicable after the end of each financial year, to publish a report on its activities in that year. *Subsections (2) and (3)* enable the Secretary of State to impose requirements on IFC authorities relating to the form, contents and distribution of the report.

#### ***Section 179: Supplementary powers***

478. This section sets out the miscellaneous powers of an IFC authority. These include matters necessary for the exercise of any of its other functions and the acquisition

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or disposal of land or other property, but the section prevents an IFC authority from borrowing money. An IFC authority may enter into arrangements with other IFC authorities for the establishment of a body to co-ordinate their activities.

## **Miscellaneous and supplemental**

### ***Section 180: Expenses of IFC authorities***

479. This section establishes the funding arrangements for IFC authorities. The constituent council or councils must pay the expenses of the IFC authority for their area. It allows a majority of the local authority members to veto the total annual budget for that IFC authority (*subsection (4)*).
480. *Subsection (2)* explains that where there is more than one council for a district, each council must fund the IFC authority in accordance with the order establishing that district. The order may provide for the portion of funding falling to each council to be calculated by reference to any circumstances whatsoever (for example, according to the length of coastline of each council).
481. *Subsection (3)* provides that section 103 of the Local Government Act 1972 concerning expenses of joint committees does not apply in relation to an IFC authority since the matter is dealt with at *subsection (2)*.

### ***Section 181: IFC authority as party to proceedings***

482. An IFC authority may bring proceedings under this Act in its own name as well as bringing or defending any other proceedings in its own name.

### ***Section 182: Exemption from liability***

483. This section provides that no member or employee of an IFC authority acting in good faith shall be liable for anything done in connection with the discharge of the authority's functions. An IFC officer benefits from the corresponding exemption in section 291.

### ***Section 183: Report by Secretary of State***

484. This section requires the Secretary of State to lay a report before Parliament on the conduct and operation of IFC authorities. This report must be laid every four years starting from the date the first IFC authority was established.

### ***Section 184: Minor and consequential amendments***

485. This section introduces Schedule 14. This Schedule makes amendments to primary legislation consequent upon the repeal of the Sea Fisheries Regulation Act 1966 and the establishment of IFC authorities to replace the existing sea fisheries committees in England. In addition, IFC authorities are added to Schedule 7 to the Natural Environment and Rural Communities Act 2006. The Secretary of State may enter into an agreement with designated bodies listed in Schedule 7 for that body to perform a Defra function in the whole or part of England.

### ***Section 185: Application to the Crown***

486. This section provides that the provisions of this Chapter bind the Crown and applies in relation to Crown land subject to *subsection (2)*. Crown land is defined in *subsection (4)*. *Subsection (3)* applies this Chapter to persons in the public service of the Crown.

### ***Section 186: Interpretation of this Chapter***

487. This section defines certain terms used in this Part of the Act. For the purposes of the Act, the terms "geomorphological" (used in Parts 5 and 9) and "physiographical" (used in Parts 6 and 7) have the same meaning.

## **Chapter 2: Local Fisheries Committees**

### **Section 187: Abolition of local fisheries committees**

488. This section repeals the Sea Fisheries Regulation Act 1966.

### **Section 188: Power to make consequential or transitional provision, etc**

489. *Subsection (1)* provides for the appropriate national authority to make any provision necessary as a consequence of the repeal of the Sea Fisheries Regulation Act 1966. This includes any transitional, consequential, incidental or supplemental provision or savings.

## **Chapter 3: Inshore Fisheries in Wales**

### **Section 189: Power of Welsh Ministers in relation to fisheries in Wales**

490. Section 189(1) provides that, subject to *subsection (2)*, the Welsh Ministers may by order make any provision which IFC authorities may make by byelaw under section 155. *Subsection (2)* provides that, to the extent that the Welsh Ministers already have the power to make such provision, *subsection (1)* does not apply. In other words, section 189 confers power on the Welsh Ministers to make any provision by order which the IFC authorities may make by byelaw, but only to the extent that the Welsh Ministers do not already have the power to make such provision.

491. The Welsh Ministers' power to make orders under section 189 will be exercisable by statutory instrument (section 316(3)) and such orders will be subject to annulment in pursuance of a resolution of the National Assembly for Wales (section 316(8) and (10)), that is, negative resolution procedure.

### **Section 190: Offences**

492. **Section 190** provides that it is an offence for a person or vessel to contravene any provision of an order made under section 189. The maximum penalties for contravening an order made under section 189 are, on summary conviction, a fine not exceeding £50,000.

### **Section 191: Powers of court following conviction**

493. **Section 191** confers various powers on the court following conviction of a person for an offence under section 190.

494. More particularly, section 191 enables the court, following conviction, to:

- order the forfeiture of –
  - a) any fishing gear used in the commission of the offence,
  - b) any sea fisheries resources (including any container in which they are kept) in respect of which the offence was committed; or
- order the offender to pay a sum of money representing the value of such fishing gear or resources.

495. Where there has been a breach of the conditions of a permit granted by the Welsh Ministers, the court may suspend the permit or disqualify the person from holding or obtaining any such permit relating to any activity to which that permit related. A permit may be suspended or disqualified for such period as the court sees fit.

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***Section 192: Power to provide services for purposes of enforcement***

496. This section provides for the Welsh Ministers to enter into arrangements, with or without charge, with third parties (private fishery owners and grantees of several and regulating orders) for marine enforcement officers to undertake enforcement activities within those third party fisheries.

***Section 193: Miscellaneous amendments***

497. This section amends the Coast Protection Act 1949 to include the Welsh Ministers as representatives on Coast Protection Boards in relation to any powers or duties that they have in relation to fishing and fisheries. It also amends the Wildlife and Countryside Act 1981 to allow the Welsh Ministers to authorise the killing of wild birds for purposes relating to fishing or fisheries (as IFCA's will have similar powers).