

MARINE AND COASTAL ACCESS ACT 2009

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

Part 7: Fisheries

Chapter 2: The Sea Fisheries (Shellfish) Act 1967

- 515. For the purpose of establishing or improving, and of maintaining and regulating, shellfisheries, the Secretary of State and the Welsh Ministers may make several and regulating orders under the Sea Fisheries (Shellfish) Act 1967 (“the Act”). The Act allows for orders to be made, in the name of a person or body of persons (whether corporate or unincorporated), to restrict the right of fishing in a defined area of the sea to that person or body. An order will relate to a named species of shellfish and will be granted for a set period of up to 60 years.
- 516. Several orders grant exclusive rights to deposit, propagate, dredge, fish for and take specified shellfish. Grantees may cultivate and manage the fishery by preparing the ground, often by bringing in new seed stocks to grow on the fishery.
- 517. Regulating orders grant powers to enable grantees to better manage and conserve specified shellfish stocks in a designated area. In particular, orders may enable grantees to introduce quotas for shellfish stocks and a system of licensing to restrict the number of persons authorised to exploit the fishery.
- 518. Orders may also be made which combine provisions of both several and regulating orders (these orders are known as “hybrid” orders). Where such an order is made, it sets up a regulated fishery that has within its boundaries one or more areas designated as several fisheries.
- 519. Parts of the Act extend to private shellfisheries which have been established under Acts of Parliament. Such shellfisheries are normally in respect of oyster fisheries and establish private rights in much the same way as with several orders.

Section 202: Power to make orders as to fisheries for shellfish

- 520. [Section 1\(1\)](#) is amended to allow for orders to be made in relation to all types of shellfish including those not already listed in subsection (1) of that section, without the present requirement for regulations to be made each time the Secretary of State (or, as the case may be, the Welsh Ministers) wishes to add a new type of shellfish to the list. The amendment extends to England and Wales only.
- 521. As a consequence of amending section 1(1), section 15(2) of the Sea Fisheries Act 1968 is repealed.
- 522. [Section 1\(4\)](#) is repealed. This removes the need for the Crown Estate or representatives of the Duchy of Cornwall or the Duchy of Lancaster to consent to the making of a several or regulating order. The amendment extends to England and Wales only.

523. **Paragraph 6** of Schedule 1 is amended so that it requires the appropriate Minister to have regard to the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961 when making a several or regulating order in relation to a part of the sea shore belonging to the Crown Estate. The Duchies, and other landowners affected by the creation of an order, remain statutory consultees. The amendment extends to England and Wales only.

Section 203: Variation etc of orders as a result of development

524. This section amends section 1 of the Sea Fisheries (Shellfish) Act 1967 to enable several and regulating orders to be varied or revoked in order for development of the sea shore affected by such orders to be carried out.
525. The power to vary or revoke a several or regulating order arises where permission has been granted for a development in, on or over any part of the sea shore affected by an order and that development will make it impossible or impracticable to exercise the rights conferred by the order. Provision for paying compensation to holders of fishery rights affected by the development may be made by the variation or revocation order.
526. Before varying or revoking an order, the appropriate Minister must consult anyone entitled to a right of fishery in the affected area, as well as the owners and occupiers of the sea shore affected by the order.
527. The amendment extends to England and Wales only.

Section 204: Purposes for which tolls etc may be applied

528. **Section 3** is amended to set out the powers of grantees of regulating orders who have the right to regulate the fishery. The amendment establishes that grantees may spend monies collected by way of tolls and royalties for purposes connected with the regulation of the fishery, not just for the improvement of the fishery as currently set out in section 3 of the Act. The amendment also establishes that grantees may, where the order provides, retain a portion of the tolls and royalties to cover the costs generated in applying for their order. The amendments extend to England and Wales only.

Section 205: Increase in penalties for certain offences relating to fisheries for shellfish

529. **Sections 3** and **7** are amended so that the maximum fine that may be imposed by a court is increased to £50,000 in line with that for other fisheries legislation. The maximum fine that may be imposed by a magistrates' court at present is £5,000. The amendment extends to England and Wales only.

Section 206: Liability of master, etc where vessel used in commission of offence

530. **Section 3** of the Act is amended to provide that, where a fishing boat is used in the commission of an offence under section 3(3), the master, owner and charterer (if any) of the boat are each guilty of an offence. Section 22 is also amended by this section to introduce a definition for the term "master" in line with that in the Sea Fish (Conservation) Act 1967 and the Fisheries Act 1981.
531. The amendments establish that masters, etc. of vessels who are licence holders may be found guilty of offences which take place from their vessels, with the possibility that their licence may be cancelled. The amendments extend to England and Wales only.

Section 207: Restrictions imposed by grantees, etc

532. **Section 3** is amended to ensure that where a regulating order enables a grantee to impose restrictions or make regulations about the dredging, fishing for and taking of shellfish, the grantee is able to carry into effect and enforce those restrictions and regulations in the same way as may be done for regulations imposed by and restrictions made in the

order itself. This amendment brings England and Wales in line with Scotland for which similar provision was made by the Police, Public and Criminal Justice (Scotland) Act 2006.

Section 208: Cancellation of licence after single relevant conviction

533. [Section 4](#) of the Act is amended to allow for the removal of licences from a holder after a single conviction for a breach of licence or of the provisions of the regulating order. This mirrors an amendment that was made in Scotland by section 32 of the Aquaculture and Fisheries (Scotland) Act 2007. The amendment extends to England and Wales only.

Section 209: Register of licences

534. New section 4ZA requires grantees of regulated fisheries to hold a register of current licence-holders' names and addresses and make it available for inspection free of charge. Copies may be issued and a charge may be made for doing so.
535. This new requirement for a register of licence holders is intended to assist the Gangmasters Licensing Authority in their duties under the Gangmasters Licensing Act 2004 and will also allow anyone to see who is currently benefiting from a licence. The amendment extends to England and Wales only.

Section 210: Protection of private shellfish beds

536. [Section 7](#) is amended to extend the protection afforded to private oyster beds under section 7 to all privately owned shellfish beds for the particular type of shellfish to which their rights of ownership relate. The amendment extends to England and Wales only.

Section 211: Use of implements of fishing

537. Section 7(4) of the Act currently provides that it is an offence to use any implement of fishing, apart from a line and hook or a net for catching floating fish, in any area where there is a right of several fishery or in a private oyster bed.
538. The amendments enable the Secretary of State (or, as the case may be, the Welsh Ministers) to specify by or under an order other implements of fishing that may be used in areas where there is a right of several fishery. The use of such implements may be restricted to particular times or particular areas of the fishery.

Section 212: Taking of crabs and lobsters for scientific purposes

539. [Section 17](#) provides that it is an offence to take, possess, sell, etc certain edible crabs and lobsters. The amendments to section 17 provide for an exemption where a person has authorisation to take edible crabs and lobsters for scientific purposes. Authorisation for the taking of such shellfish from within British fishery limits, not including the Scottish zone, Northern Ireland zone or Welsh zone, will be granted by the MMO, and authorisation for the taking of such shellfish from the Welsh zone will be granted by the Welsh Ministers. As well as extending to England and Wales, the amendment also extends to Scotland. This ensures that an authorisation granted by the MMO or the Welsh Ministers to take crabs and lobsters from those parts of the sea is recognised in Scotland, even though no authorisation may be granted by the Scottish Ministers to take such shellfish from the Scottish zone.
540. The ban on taking crabs covers those carrying spawn attached to their tail or other exterior part and those which have recently cast their shell. Should an order covering lobsters be made, this will also allow the MMO or the Welsh Ministers (as the case may be) to grant authorisations in respect of taking lobsters for scientific purposes.
541. The new subsections mean that the taking of crabs and lobsters for scientific purposes will not be an offence under section 17 and brings the Act in line with both Community and domestic legislation.

Section 213: Orders prohibiting the taking and sale of certain lobsters

542. The amendments allow the Secretary of State (or, as the case may be, the Welsh Ministers) to make an order to introduce protection for lobsters under section 17(3) independently of any other devolved administration. Each administration will be able to act alone. At present Scottish Ministers may act alone to make an order for Scotland. However the Secretary of State and the Welsh Ministers must act jointly with the Secretary of State for Scotland to make orders for England and Wales. This difference in procedure between the administrations is a consequence of devolution and of subsequent amendments to section 17. The amendment extends to England, Wales and Scotland.

Section 214: Power to appoint an inspector before making orders as to fisheries for shellfish

543. These amendments remove the requirement to appoint an inspector and provide the Secretary of State (or, as the case may be, the Welsh Ministers) with a discretionary power in making decisions on the appointment of an inspector and calling public inquiries. This amendment does not apply to any application made for an order under section 1 of the Act before this section comes into force. The amendment extends to England and Wales.