

MARINE AND COASTAL ACCESS ACT 2009

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

Part 7: Fisheries

Chapter 3: Migratory and Freshwater Fish

Byelaws

Section 224: Power to make byelaws

590. This section amends paragraph 6 of Schedule 25 to the Water Resources Act 1991, which sets out the Environment Agency's powers to make fisheries byelaws.
591. *Subsections (2) and (3)* extend the species of fish for which the Environment Agency may make byelaws to include (in addition to salmon, trout, eels and freshwater fish) lampreys, shad and smelt, and any fish specified (by order under new section 40A of the Salmon and Freshwater Fisheries Act 1975).
592. *Subsection (4)* allows the Environment Agency to set close seasons and close times. These powers were previously in Schedule 1 to the Salmon and Freshwater Fisheries Act 1975. All byelaw powers will now be in the 1991 Act and enforced by section 211 of the Water Resources Act 1991, which makes it an offence to breach a byelaw, including one made under paragraph 6(2)(a) of Schedule 25 to the 1991 Act.
593. *Subsection (5)* amends paragraph 6(2)(b)(i) to allow byelaws prohibiting the taking of fish greater than a specified size in addition to the taking of or fishing for fish smaller than a specified size.
594. *Subsection (6)* amends paragraph 6(2)(e) to allow byelaws to be made for purposes which were previously contained in section 20 of the Salmon and Freshwater Fisheries Act 1975.
595. *Subsection (7)* omits paragraph 6(3), which allowed byelaws imposing further restrictions on fishing activity during close times. It is replaced by the general close season and close time byelaw making power described in relation to *subsection (4)* (see above).
596. *Subsection (8)* omits paragraph 6(4) of Schedule 25, which allows byelaws regarding the deposit or discharge of liquid or solids detrimental to fish. Section 4 of the Salmon and Freshwater Fisheries Act 1975 provides specific control of these activities.
597. *Subsection (9)* inserts new paragraph 6(5A) and (5B) into Schedule 25. Sub-paragraph (5A) enables the Environment Agency to authorise a person to act in breach of a byelaw. Examples of where an authorisation might be given are where action is needed to ensure the good management of a fishery or for scientific research. Sub-paragraph (5B) clarifies that byelaws may apply to historic installations.

*These notes refer to the Marine and Coastal Access Act 2009
(c.23) which received Royal Assent on 12th November 2009*

598. Under *subsection (10)* existing byelaws made under paragraph 6(3) may be taken as having been made under the new power.

Section 225: Byelaws: emergency procedures

599. This section inserts a new Schedule 27 into the Water Resources Act 1991. Schedule 27 sets out the circumstances in which the Environment Agency may make emergency byelaws and the procedure for making such byelaws. Unlike byelaws made under Schedule 25 to the 1991 Act, there is no requirement for statutory public consultation or for confirmation by the appropriate national authority. Instead, emergency byelaws are time-limited and the appropriate national authority has a duty to repeal an emergency byelaw where it appears the criteria for making it no longer apply, or to amend it where it considers it appropriate.

Section 226: Byelaws: enforcement

600. Section 211 of the Water Resources Act 1991 sets the levels of fines for contravening byelaws made by virtue of Schedule 25 to that Act. This section raises the fine from one not exceeding level 4 on the standard scale (currently £2,500) to £50,000.

Section 227: Byelaws: compensation

601. This section replaces the duty in section 212 of the Water Resources Act 1991 to pay compensation to a fishery owner or occupier whose fishery is injuriously affected by a byelaw with a power to do so.