

MARINE AND COASTAL ACCESS ACT 2009

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

Part 7: Fisheries

Chapter 1: The Sea Fish (Conservation) Act 1967

Section 194: Size limits for sea fish

498. Section 1 of the Sea Fish (Conservation) Act 1967 enables the Ministers (now the Secretary of State and the devolved administrations) to make an order to set minimum size limits for sea fish. Orders under this section may: prohibit any person from landing sea fish below a specified size; prohibit the sale of sea fish below a specified size; and prohibit the carriage by a relevant British fishing boat of sea fish below the specified size. Orders under this section may set different limits for different areas or for fish of different sexes and may restrict the landing by any person of parts of fish below the size limit set for that species.
499. **Section 1** does not currently allow for a maximum size limit or for a size range to be set by an order or for the carriage restrictions to apply to a vessel not covered by the definition of a relevant British fishing boat. Section 1 is amended to provide for all the current powers available under orders made under that section to apply to any requirements as to size, rather than minimum size limits only, and for the prohibition on carriage to apply to all relevant British vessels. The effect of these amendments is to allow Ministers to make an order setting a minimum or a maximum size limit for sea fish or a size range outside which no fish may be landed, sold or carried.
500. The amendments made by this section extend to England and Wales only and the powers to make orders on the basis of these amendments would be exercisable by the Secretary of State as regards England and the Welsh Ministers as regards Wales. Since this section does not extend to Northern Ireland, amendments have been made to remove Northern Ireland fishing boats from the coverage of certain of the measures.

Section 195: Regulation of nets and other fishing gear

501. Section 3 of the Sea Fish (Conservation) Act 1967 enables the Ministers (now the Secretary of State and the devolved administrations) to make an order in relation to relevant British fishing boats registered in the UK applying restrictions to nets and other fishing gear in respect of their construction, design, material and size. An order under this section may be made so as to apply only in relation to fishing for specified descriptions of sea fish, specified methods of fishing, and specified areas or periods.
502. **Section 3(2)** provides that an order may be made to extend to nets and fishing gear carried within British fishery limits (excluding the Scottish zone) by Scottish fishing boats, fishing boats registered outside the UK and unregistered boats. In addition to other matters, section 3(3) and (4) provide for exemptions from the restrictions imposed by orders under this section to be made in relation to fishing boats. Section 3(5) creates offences for fishing in contravention of any orders made under this section.

503. **Section 3** does not allow restrictions to apply equally to persons fishing from the shore as to persons fishing from a boat. Section 3 is amended so that restrictions of this type may be made by order in respect of persons fishing from the shore of England and Wales. That section is also amended to create new offences for any person fishing from the shore in contravention of any such restrictions and to allow for orders to exempt persons from the restrictions imposed. The power to make orders using the new provisions would be exercisable by the Secretary of State as regards England and the Welsh Ministers as regards Wales.

Section 196: Charging for commercial fishing licences

504. This section adds a new *subsection (4A)* to section 4 of the Sea Fish (Conservation) Act 1967. Section 4 gives powers to charge for commercial sea fishing vessel licences. *Subsection (4A)* enables the Ministers to specify the amount of the charge in the order, to make provision in the order as to how the charge should be determined or to provide that in specified circumstances no charge will be payable. The new subsection clarifies the existing power for the Ministers to vary the amount of charge for different classes of licence. An amendment to section 22 of the Act provides that “class” may relate to any circumstances whatsoever, including, for example, vessel length, vessel tonnage or gear type. The amendments made by this section extend to England and Wales only.

Section 197: Grant of licences subject to conditions imposed for environmental purposes

505. Section 4 of the Sea Fish (Conservation) Act 1967 provides powers to prohibit fishing by fishing boats in any specified area without authorisation by a licence. Section 4(6) provides that licences may authorise fishing subject to certain conditions. That section is amended to add to these conditions to allow the imposition of conditions for marine environmental purposes, as described.

Section 198: Power to restrict fishing for sea fish

506. Section 5 of the Sea Fish (Conservation) Act 1967 enables the Ministers (now the Secretary of State and the devolved administrations) to make an order restricting fishing for sea fish of any description and by any method specified for any period and creates an offence where any fishing boat is used in contravention of such an order. The order may apply to any fishing boat within relevant British fishery limits. Outside those limits, the order may apply only to a relevant British fishing boat registered in the UK, or where an order relates to fishing for salmon or migratory trout, to any fishing boat which is British-owned but not registered under the Merchant Shipping Act 1995. Any fish caught in contravention of a restriction of an order made under this section must be returned immediately to the sea.
507. Orders made under section 5 apply only to fishing boats and not to persons fishing from the shore. That section is amended so that orders may be made in relation to such persons. Offences are also created in respect of persons fishing in contravention of an order.
508. The amendments also provide for restrictions to be made in an order to place limits on how much fish a person or a fishing boat may take in any given period. Any fish caught in excess of this limit must be returned to the sea. The order may provide that any sea fish caught during the relevant period but returned to the sea as soon as the limit is exceeded do not count towards the limit imposed by the order in question. In addition, the amendments provide that an order which prohibits fishing for sea fish, or fishing for sea fish by any specified method, may require the stowage of fishing gear.
509. The powers to make orders using the new provisions would be exercisable by the Secretary of State as regards England and the Welsh Ministers as regards Wales. Since this section does not extend to Northern Ireland, amendments have been made to remove Northern Ireland fishing boats from the coverage of certain of the measures.

Section 199: Penalties for offences

510. Section 11 of the Sea Fish (Conservation) Act 1967 sets the levels of fine applicable for persons found guilty of offences under specified sections of that Act. Offences under section 3, 4(9A) or 5(6) attract a fine not exceeding £5,000 on summary conviction or an unlimited fine on conviction on indictment. Offences under section 1, 2 or 6(5) attract a fine not exceeding the statutory maximum on summary conviction or an unlimited fine on conviction on indictment. Section 11 is amended to increase these levels of fine on summary conviction to a maximum of £50,000 or on indictment to an unlimited fine.
511. Section 15 of the Sea Fish (Conservation) Act 1967 provides penalties for certain offences relating to the enforcement of orders under that Act by British sea-fishery officers. That section is amended to replace paragraph (b) of subsection (2C) with two new subsections which provide for maximum fines on summary conviction for the offences of obstructing or assaulting an enforcement officer in the exercise of his duties under section 15 of £20,000 and £50,000 respectively.
512. Section 16 of the Sea Fish (Conservation) Act 1967 provides for the enforcement of section 2 and orders made under section 1 of that Act. That section is amended to replace subsection (1A) with two new subsections which provide for maximum fines on summary conviction for the offences of obstructing or assaulting an enforcement officer in the exercise of his powers under subsection (1) of £20,000 and £50,000 respectively.

Section 200: Offences by directors, partners, etc

513. This section replaces section 12 of the Sea Fish (Conservation) Act 1967 and provides that where offences under sections 1 to 6 of that Act have been committed by a body corporate, then any officer, as defined, of the body corporate may be found to be guilty of that offence and liable to proceedings and fines. Officers will be liable in this way only where the offence has been committed with their consent or connivance or through their neglect. Similar provision is made in respect of offences committed by Scottish firms.

Section 201: Minor and consequential amendments

514. This section introduces Schedule 15, which contains minor and consequential amendments to sections 1, 3, 5 and 11 of the Sea Fish (Conservation) Act 1967 and Schedule 4 to the Fisheries Act 1981.

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.

Chapter 3: Migratory and Freshwater Fish

544. This Chapter widens the powers available to the Environment Agency in its role as a fisheries manager. It also gives powers to the appropriate national authority to make regulations in respect of the keeping of live fish and their introduction into and removal from inland waters.
545. The Salmon and Freshwater Fisheries Act 1975, the Water Resources Act 1991 and the Environment Act 1995 apply a regulatory framework (a licensing system, byelaw making powers, enforcement powers and certain other restrictions) to fisheries of

salmon, trout, eels and freshwater fish. The sections in this Chapter amend these three Acts and related enactments to extend the regulatory framework to smelt, lampreys, and (in respect of byelaw-making powers) shad, and to empower the appropriate national authority to add any other kinds of fish to the regulatory framework. There are also a number of other miscellaneous changes, including amendments to the Theft Act 1968 and the Salmon Act 1986.

546. The 1975, 1991 and 1995 Acts apply to England and Wales, including the adjacent territorial sea, and to those parts of the Border River Esk and its tributaries which are in Scotland. They do not apply to those parts of the River Tweed and its tributaries which are in England. The sections in this Chapter, with some exceptions, have the same application. The exceptions are section 231, which applies to the whole catchment area of the Border River Esk, and amendments to the Theft Act 1968 and the Salmon Act 1986 (sections 228 and 229) which apply in England and Wales only.
547. “Appropriate national authority” means the Secretary of State, except in relation to Wales and the territorial sea adjacent to it, where it means the Welsh Ministers (see section 221(2)).

Taking fish etc

Section 215: Prohibited implements

548. This section amends section 1 of the Salmon and Freshwater Fisheries Act 1975. Section 1 creates offences in relation to certain instruments used for taking fish; in particular section 1(1)(a) lists instruments the use of which is prohibited.
549. *Subsection (2)(a)* adds tailers to the list in section 1(1)(a). A tailer is a pole with a retractable loop of wire at the end, which is looped around the body of the fish to help remove it from the water.
550. *Subsections (2)(b), (3) and (4)* extend the list of fisheries to which section 1 applies to those for eels, lampreys, smelt, shad. *Subsection (5)* inserts a new subsection (1A) into section 1, which extends this list to fisheries for any fish specified in an order made under new section 40A of the Salmon and Freshwater Fisheries Act 1975 (inserted by section 221).
551. *Subsection (5)* also inserts a new subsection (1B) into section 1, which gives the appropriate national authority power by order to add or remove instruments from the list in section 1(1)(a).
552. *Subsection (6)* inserts new section 1(3A), by virtue of which references in section 1 to waters include waters adjoining the coast of England and Wales to a distance of six nautical miles from baselines. This corresponds to the area of sea in which the Environment Agency carries out its functions.
553. Section 1(4) of the Salmon and Freshwater Fisheries Act 1975 permits the use of a gaff or tailer when fishing with a rod and line. A gaff is a pole with a steel hook mounted on the end, used to snag the fish, and subsequently to remove it from the water. *Subsection (7)* omits both this subsection, and the references to it within the section, with the effect that the use of these instruments is no longer permitted.

Section 216: Roe etc

554. This section amends section 2 of the Salmon and Freshwater Fisheries Act 1975. Section 2(1) prohibits the use of roe (fish eggs) and the buying, sale or possession of salmon or trout roe, for the purpose of fishing for salmon, trout or freshwater fish.
555. *Section 2(1)(a)* is amended by extending the prohibition on the use of roe for the purpose of fishing to lampreys, smelt, shad, and to any other specified fish (by order under new

section 40A). This section amends section 2(1)(b) to cover the buying, selling, exposing for sale or possession of any roe for that purpose.

556. **Section 2(2)** is amended to extend the prohibition on taking, killing or injuring and buying, selling or possession of any unclean or immature fish to lampreys, smelt and shad. An unclean fish is one which is about to spawn, or has recently spawned and has not yet recovered from spawning.
557. **Subsection (4)** allows the taking of immature freshwater fish where permitted by Environment Agency byelaws.

Section 217: Licences to fish

558. This section amends section 25 of the Salmon and Freshwater Fisheries Act 1975, which requires the Environment Agency to regulate fishing for salmon, trout, eels and freshwater fish by means of a system of licensing.
559. **Subsection (1)** inserts new section 25(1) which amends the scope of the licensing system by extending the list of kinds of fish to which the licensing system applies to include lampreys, smelt and any fish specified in an order made under new section 40A of the Salmon and Freshwater Fisheries Act 1975. New section 25(1) also restricts the licensing system to licensable means of fishing. Licensable means of fishing are the instruments set out in new section 25(1A). These are rod and line, historic installations (certain fixed nets and traps which were certified under old legislation, or were in use by virtue of a grant or charter or immemorial usage in 1861) and such other means of fishing as the appropriate national authority may specify by order.
560. A person who fishes otherwise than by a licensable means of fishing is required to have an authorisation under new section 27A of the Salmon and Freshwater Fisheries Act 1975, inserted by section 219.
561. **Subsection (2)** provides that the Environment Agency, which already has the power to introduce licences for different areas, may introduce licences in relation to different descriptions of waters. For example, this power might be used to introduce different licences for canals as opposed to rivers.
562. **Subsection (3)** amends section 25(4) by removing a person's entitlement to use a gaff or tailer when fishing with rod and line. This flows from the addition of tailers to the list of prohibited instruments in section 1.
563. **Subsection (4)** omits previous provisions which, first, deemed a licence for fishing for salmon also to allow fishing for trout, and, second, deemed a licence for fishing for salmon or trout to allow fishing also for freshwater fish and eels.
564. **Subsection (5)** inserts new section 25(10) and (11), which allows the Environment Agency to permit people to fish by licensable means of fishing without a licence. For example, the Agency may allow those who need to remove excess fish from a particular water for management reasons, to do so without a licence.
565. **Subsection (6)** amends paragraph 11, and omits paragraph 12, of Schedule 2 to the Salmon and Freshwater Fisheries Act 1975. This removes the requirement to pay 20p for each name removed from, inserted into or substituted in a fishing licence.
566. **Subsection (7)** empowers the Environment Agency to impose conditions (by way of notice) on a licence to use historic installations. Conditions might include a limit on the number of fish which may be taken, specifying the times at which they may be taken or the gear which may be used. A breach of such a licence condition is an offence under section 27 of the Salmon and Freshwater Fisheries Act 1975.

Section 218: Limitation of licences

567. This section amends section 26 of the Salmon and Freshwater Fisheries Act 1975. Section 26 enables the Environment Agency, by order confirmed by the Minister, to limit the number of licences which it may issue for fishing for salmon or trout other than rainbow trout with any specified instrument other than rod and line. References to “the Minister” are replaced by references to the appropriate national authority throughout this section.
568. The amendments made by *subsection (2)* allow orders under section 26 to be made in respect of any kind of licence issued under section 25. Exceptions to this are provided by *subsection (3)*. This inserts new section 26(1A) and (1B), which sets out the circumstances in which an order may be made and excludes fishing by rod and line or historic installation from the scope of an order. This will allow the Environment Agency to limit the number of licences for all those fisheries subject to the system of licensing under section 25(1). New section 26(1A)(b) will empower the Environment Agency to limit the number of licences in fisheries that have a significant impact on the marine or aquatic environment.
569. The Minister is currently required to hold a local inquiry before confirming an order made under section 26 if the number of licences proposed to be issued is less than the number of licences issued in any of the three preceding years, or if an objection is made by any person who has held a relevant licence during each of the two preceding years. *Subsection (4)* amends section 26(3) to remove the obligation to hold a local inquiry, and replaces it with a power to do so.
570. *Section 26(4)* and *(5)* prohibits Ministers from confirming an order if it fails to secure that any person who is dependent on fishing for his livelihood may obtain a licence under it. *Subsection (5)* replaces this requirement with a power for the Environment Agency to pay compensation.

Section 219: Authorisation to fish

571. This section inserts new sections 27A and 27B into the Salmon and Freshwater Fisheries Act 1975. New section 27A gives the Environment Agency power to authorise a person to use any means (other than a licensable means of fishing) to fish for salmon, trout, eels, lampreys, smelt and freshwater fish, and other specified fish (by order under new section 40A). The Environment Agency may refuse or revoke authorisations, subject them to conditions, charge for them and grant them for limited periods of time. The Agency will also be able to grant an authorisation to a business or organisation or to a named individual within that organisation.
572. New section 27B makes it an offence to fish for or take fish using any means of fishing, other than an instrument for which a licence is required, without an authorisation.

Section 220: Enforcement

573. This section amends Part 5 of the Salmon and Freshwater Fisheries Act 1975.
574. *Subsection (2)* amends section 31. Section 31 gives water bailiffs (enforcement officers of the Environment Agency) powers of search and seizure where instruments or baits have been used in contravention of the Act. *Subsection (2)(a)* and *(b)* removes references to the Act so as to allow water bailiffs to check, amongst other things, partially submerged fishing gear to ensure hooks or bait prohibited under byelaws are not being used.
575. *Subsection (2)(c)* provides that a water bailiff’s power of seizure includes a sample of any fish.
576. *Subsection 2(d)* allows water bailiffs to disable or destroy dams, fishing weirs, fishing mill dams or fixed engines suspected of having been operated or used, or likely to be

used in contravention of the Salmon and Freshwater Fisheries Act 1975. This replaces, with some changes, the powers that were previously in sections 6, 7, and 8 of the 1975 Act but are deleted by other provisions in this Act.

577. *Subsection (3)* amends section 32. Section 32 gives water bailiffs the power to enter, remain upon and traverse any lands adjoining or near to any waters, subject to exceptions. The amendment removes the exception for decoys or lands used exclusively for the preservation of wild fowl which will allow, for example, water bailiffs to take action on such land against poaching.
578. *Subsection (4)* amends section 33. Section 33 enables a justice of the peace to issue a warrant authorising a water bailiff to enter land for the purpose of seizing illegal nets and other such instruments as well as salmon, trout, freshwater fish or eels that might have been illegally taken. *Subsection (4)(a)* extends the power of seizure to legal instruments suspected to have been used illegally and *subsection (4)(b)* extends the power to any fish illegally taken or sold. *Subsection (4)(c)* extends the purpose for which a power of entry may be authorised to the destruction or disablement of any fixed engine, dam, fishing weir or fishing mill dam found on the premises and suspected of having been used illegally.
579. *Subsection (5)* increases the period during which a warrant remains in force from one week to three months.
580. *Subsection (6)* amends section 34. Section 34 enables water bailiffs to seize without warrant any person who has illegally taken or killed fish, or is found on or near any waters with the intent so to do, or with any prohibited instrument but only during the period between sunset and sunrise. *Subsection (6)* removes this restriction.
581. *Subsections (7) and (8)* amend section 35. Section 35 empowers water bailiffs and other enforcement officers to demand a person fishing, suspected of being about to fish, or having fished in the preceding half hour, to produce his fishing licence or other authority to fish.
582. *Subsections (7)(a) and (7)(b)* replace the reference to having fished within “the preceding half hour” with having fished “recently” and allow water bailiffs to demand the production of a fishing licence from those suspected of intending to fish or those who have recently fished.
583. *Subsection (7)(c)* limits water bailiffs’ and other enforcement officers’ powers to require the production of a licence or authorisation issued under the Salmon and Freshwater Fisheries Act 1975 or a licence issued under section 16 of the Wildlife and Countryside Act 1981, under which certain species of fish are protected.
584. *Subsection (8)* omits section 35(2). This allowed any person, on the production of their own fishing licence, to demand another person produce their fishing licence and to state their name and address.
585. *Subsection (9)* increases the fine for using any explosive substance, any poison or other noxious substance, or any electrical device with the intent to take or destroy fish in contravention of section 5 of the Salmon and Freshwater Fisheries Act 1975 from the prescribed sum (currently £5,000) to £50,000.

Section 221: Power to specify fish

586. This section inserts a new section 40A into the Salmon and Freshwater Fisheries Act 1975.
587. New section 40A empowers the appropriate national authority to specify additional species of fish to which the following provisions will apply:
- fishing with prohibited instruments (section 1 of the Salmon and Freshwater Fisheries Act 1975);

- use of roe (section 2 of that Act);
- licensing and authorisation of fishing activities (sections 25 and 27A of that Act);
- the offence of handling fish in suspicious circumstances (section 32 of the Salmon Act 1986);
- byelaw making powers (paragraph 6 of Schedule 25 to the Water Resources Act 1991); and
- the duties of the Environment Agency (section 6(6) of the Environment Act 1995).

Section 222: Order-making powers: supplementary

588. This section inserts section 40B into the Salmon and Freshwater Fisheries Act 1975, which sets out the procedure for making an order made under section 40A described above.

Section 223: Definitions relating to fish

589. This section amends section 41 of the Salmon and Freshwater Fisheries Act 1975. It gives amended definitions for eels and freshwater fish and new definitions for freshwater crayfish and smelt.

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.

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.

Supplementary

Section 228: Theft of fish from private fisheries etc

602. This section raises the penalty for committing the offence of taking or destroying fish under paragraph 2 of Schedule 1 to the Theft Act 1968 to £5,000. Previously, it was £200 for an offence committed during the day and £1,000 for an offence committed at night to £5,000. It also omits the requirement for the offence to have taken place during the hours between sunset and sunrise, removes the custodial element of the penalty, and removes the link to a previous conviction.

Section 229: Handling fish

603. Section 32 of the Salmon Act 1986 makes it an offence to handle salmon or sea trout in suspicious circumstances. A person is guilty of the offence if, at a time when he believes or it would be reasonable for him to suspect that an offence involving taking, killing or landing a salmon or sea trout has been committed, he receives the salmon or sea trout, or undertakes or assists in its retention, removal or disposal by or for the benefit of another person, or if he arranges to do so.
604. This section extends the offence to eels, lampreys, smelt, freshwater fish, and other specified fish (by order under section 40A of the Salmon and Freshwater Fisheries Act 1975). Salmon, trout, eel, smelt, fish and freshwater fish are given the same meaning as in section 41(1) of that Act.
605. *Subsection (3)(c)* removes the requirement for the undertaking or assisting to have been “for the benefit of another person”. The effect is that a person commits an offence if he undertakes, for instance, the disposal of fish for his own benefit and knows or suspects that the fish was unlawfully taken.

606. *Subsection (5)* adds the sale of fish to the list of offences relevant to the commission of an offence under section 32. This means it becomes an offence to handle a fish sold in contravention of, for example, byelaws.

Section 230: Duties of the Environment Agency

607. Section 6(6) of the Environment Act 1995 requires the Environment Agency to maintain, improve and develop salmon fisheries, trout fisheries, freshwater fisheries and eel fisheries.
608. This section extends the duty to lampreys and smelt fisheries, and fisheries of other specified fish (by order under section 40A of the Salmon and Freshwater Fisheries Act 1975).

Section 231: Tweed and Esk fisheries

609. Historically, English legislation on salmon and freshwater fisheries has applied to the Scottish as well as the English River Esk and its tributaries. Conversely, Scottish legislation has applied to the English as well as the Scottish Tweed. Section 111 of the Scotland Act 1998 allows this position to be maintained post-devolution by means of an Order in Council. Currently such orders may only relate to salmon, trout, eels and freshwater fish.
610. *Subsection (2)* amends section 111 to extend the scope of the order-making power to eels, lampreys and smelt. Section 111(4) defines “conservation “in relation to salmon, trout, eels and freshwater fish to include the protection of the environment. *Subsection (3)* extends this definition to the protection of the environment of lampreys, smelt and shad. *Subsection (4)* allows the Order in Council to amend section 111(1) to add or remove any species of fish listed and to which the order-making power applies.

Section 232: Keeping, introduction and removal of fish

611. This section allows the appropriate national authority to make regulations to prohibit persons from keeping any fish, introducing any fish into inland waters or removing any fish from inland waters without prior authorisation.
612. Section 30 of the Salmon and Freshwater Fisheries Act 1975 prohibits the introduction of fish into inland waters unless the person introducing the fish has the prior consent in writing of the Agency. Regulations made under section 232 may make consequential amendments to legislation, which would allow section 30 to be replaced by any such regulations.

Section 233: Consequential and supplementary amendments

613. This section omits sections 4(2), 23 and 24 of the Salmon and Freshwater Fisheries Act 1975.
614. Section 4 of the 1975 Act makes it an offence to allow any liquids or solid matter into waters that cause those waters to be poisonous or injurious to fish, spawning grounds, spawn or food of fish. Section 4(2) disapplies this offence in relation to those exercising any lawful rights, or continuing a method in use in connection with the same premises before 18 July 1923.
615. As water pollution legislation (from Rivers Prevention of Pollution Act 1951 through to Water Resources Act 1991) has removed any right to pollute without the prior consent of the Environment Agency, the disapplication under section 4 no longer applies.
616. Section 23 of the 1975 Act prohibits the export of unclean salmon or trout or any salmon or trout caught during a period when the sale of salmon or trout is prohibited. It also sets conditions on the export of salmon or trout between 31 August and the following 1 May. These provisions serve no useful purpose.

617. Section 24 of the 1975 Act requires consignments or packages containing salmon and trout to be so marked. The requirement to carry a consignment note under Council Regulation (EC) 1/2005 on the Protection of Animals During Transport and Related Operations makes this section redundant.

Chapter 4: Obsolete Fisheries Enactments

Section 234: Repeal of spent or obsolete enactments

618. This section repeals six redundant Acts of Parliament relating to sea fisheries and part of one further such Act. All of this legislation is approximately 100 years or more old. These Acts are repealed as part of a wider Government commitment to reduce regulatory burdens on the private, public and voluntary sectors through the Davidson Review¹. The Davidson Review identified a series of fisheries Acts to consider for repeal. At the present time the Government has been able to identify six Acts and part of a seventh as suitable for immediate repeal. This section also repeals sections 86, 87 and 163 of the Port of London Act 1968.

¹ Further information on the *Davidson Review: Implementation of EU legislation* can be found on <http://www.berr.gov.uk/files/file44583.pdf> or ISBN-10: 0-11-840484-9 and ISBN-13: 978-0-11-840484-6.