

# MARINE AND COASTAL ACCESS ACT 2009

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## EXPLANATORY NOTES

### SUMMARY AND BACKGROUND

#### **Part 8: Enforcement**

#### *Chapter 4: Fisheries Enforcement Powers*

#### **Inspection and seizure of objects at sea**

#### *Section 264: Power to inspect and seize objects at sea*

677. This section provides enforcement officers with powers to inspect any object found in the sea which it is believed has been or is being used for or in connection with fishing. This includes powers to lift the object out of the sea for inspection. If the officer believes that the object in question has been used in committing, or is evidence of, an offence then it may be seized. The power to seize an object includes power to seize anything attached to or contained within the object (for example, fish). If the officer does not seize the item the officer must replace it or, if it is not practicable to do so, may seize it for subsequent collection by its owner.

#### *Section 265: Reports of inspections under section 264*

678. This section contains reporting requirements that an enforcement officer must follow after inspecting objects under section 264. The report must state the date and time of the inspection, the identity of the officer in charge of the inspection and how the officer may be contacted.

679. Where anything has been seized the report must also state what has been seized, the reason for its seizure, and any further action to be taken in respect of the object.

680. Where the object has not been seized, then, wherever it is reasonably practicable to do so, a copy of the report must be attached to the object. If the report cannot be attached to the object, the section provides that the report should be served on every person who appears to the officer to be the owner, or one of the owners, of the object. If, after taking reasonable steps to identify any person as owning the object, the officer cannot do so, he must take reasonable steps to bring the report to the attention of persons likely to be interested in it.

681. Where an object was seized and the relevant authority has decided not to take proceedings in respect of any offence relating to the object, or such proceedings have concluded, the relevant authority must serve a copy of the report on every person who seems to be the owner, or one of the owners, of the property. If the object was seized under section 264(5) because it was impractical to replace it, the report and notice of collection must be served together. Where a relevant authority cannot identify any person as owning the object it must take reasonable steps to bring the contents to the attention of those likely to be interested in it.

***Section 266: Retention of objects seized under section 264(2)***

682. This section provides for the retention by the relevant authority of any objects seized under section 264(2). The objects may be retained until such time that a decision has been made not to prosecute or where proceedings are completed without an order for forfeiture being made. In either event, the objects must be made available for collection. The object does not however have to be made available if it is gear or fish liable for forfeiture under section 275 or 276.

***Section 267: Disposal of objects seized under section 264***

683. This section sets out arrangements for the disposal of objects seized under section 264 where the relevant authority no longer wishes to retain the object or the relevant authority is required to make the object available for collection.
684. The relevant authority must send a “notice of collection” to every person who appears to the authority to be the owner, or one of the owners of, the property. The authority may take any other steps it sees fit to notify such persons that the object is available for collection. Where an owner cannot be identified, it may take the action it sees fit to bring the notice to the attention of persons likely to be interested in it. The notice must state where the object is and that the object must be collected within 3 months or it will be disposed of.

**Seizure for purposes of forfeiture**

***Section 268: Power to seize fish for purposes of forfeiture***

685. This section provides a power for an enforcement officer to seize fish for the purpose of forfeiture. The enforcement officer may only do this where a court has the power, following conviction, to order forfeiture. The power enables the seizure of fish from a vessel, from the sea or from the shore, including fish seized under section 252.
686. The section gives enforcement officers practical powers, such as allowing them to take the container the fish are in or to require the fish to be put in a container. It includes a power to require anybody (for example, crew, skipper etc) to keep the fish secure and not to tamper with them whilst the investigation is ongoing and until the fish are seized and removed. It also includes the power to request assistance from anybody in or on the premises whilst the enforcement officer is carrying out his duties, and the power to require a person carrying on an activity in respect of which the officer has functions to afford facilities and assistance.

***Section 269: Power to seize fishing gear for purposes of forfeiture***

687. The same principles which apply in relation to section 268 (regarding the seizure of fish for the purpose of forfeiture) apply here to the seizure of fishing gear.

***Section 270: Procedure in relation to seizure under section 268 or 269***

688. This section creates an obligation on the enforcement officer who seizes any fish or fishing gear under section 268 or 269 to serve a written notice on every person who appears to the officer to be the owner or one of the owners at the time the fish or gear were seized, and sets out other persons on whom the notice must be served (depending on the location from which the property was seized).
689. The written notice must state what has been seized, the reason for its seizure, the nature of the alleged offence committed and any proposed action to be taken. The notice must also indicate that, unless the property is liable for forfeiture under section 275 or 276, it will be kept until such time as it may be released or the court has ordered its forfeiture.
690. *Subsections (3) to (5)* set out the procedure where the fish or fishing gear has been seized following inspection carried out in accordance with section 264. It states that the

officer must serve the notice referred to in section 265 at the same time as the notice which is to be served under this section and makes provision for the situation where the owner cannot be ascertained.

***Section 271: Retention of property seized under section 268 or 269***

691. This section provides the relevant authority with the power to retain any fish or fishing gear seized under section 268 or 269. However the property must be made available for collection as soon as is reasonably practicable where either the relevant authority decides not to bring court proceedings or any proceedings brought are concluded without an order for forfeiture being made.

***Section 272: Bonds for release of seized fish or gear***

692. This section allows the owner of any property (or the owner or charterer of the vessel if the property was seized from there) seized under section 268 or 269 and being retained under section 271 to lodge a bond with the relevant authority in return for its release. The relevant authority may set conditions for the release and may enter into an agreement with the owner as to the amount of money to be given as the security. Where an agreement is not reached, the court may determine the amount to be paid as security.
693. If the relevant authority has decided not to take proceedings or proceedings have concluded with no order for forfeiture having been made, the relevant authority must return the bond as soon as possible. Where a court has the power to order the forfeiture of fish or fishing gear seized under section 268 or 269, that power applies equally to any bond given under this section.

***Section 273: Power of relevant authority to sell seized fish in its possession***

694. This section gives the relevant authority the power to sell any fish it has retained under section 271. The power of the court to order the forfeiture of the fish may be exercised in relation to the proceeds of the sale of the fish.
695. The relevant authority may retain the proceeds of sale until the court orders the money to be forfeit, the relevant authority has decided not to take proceedings or proceedings have concluded with no order for forfeiture having been made. If the relevant authority decides not to take proceedings or proceedings have concluded with no order for forfeiture having been made then the relevant authority must release the proceeds of the sale as soon as possible. *Subsections (5) and (6)* provide for the persons to whom the proceeds of sale are to be released and the procedure if that money remains unclaimed.
696. Provision is also made as to how the fish are to be sold, including a right for the relevant person to make representations as to how the fish are to be sold. This section also permits the relevant authority to deduct its reasonable expenses from the proceeds of sale.

***Section 274: Disposal of property seized under section 268 or 269***

697. Where the relevant authority no longer wishes to retain fish or fishing gear seized under section 268 or 269, or where it is required to make such property available for collection under section 271, section 274 requires a notice of collection to be served on every person who appears to be the owner, or owners, of the property. The notice must state the location from which the property may be collected and that if not collected within 3 months it will be disposed of. The specified location for collection will usually be a port office. It further makes provision where the relevant authority is unable to identify an owner.

## **Forfeiture**

### ***Section 275: Forfeiture etc of prohibited items***

698. This section provides a power for certain fishing gear seized by an enforcement officer to be forfeited to the relevant authority for disposal. The forfeiture power applies to any fishing gear seized on board a vessel or from the sea which when seized by the enforcement officer could not be used for any form of fishing without committing an offence under the law of England and Wales. Examples of such gear include “French Dredges”, gill and other types of nets with mesh sizes between 71-89mm. The forfeiture power does not apply to gear found on land.

### ***Section 276: Forfeiture etc of fish failing to meet size requirements***

699. This section provides a forfeiture power in respect of fish that fail to meet size requirements which corresponds to the forfeiture power in respect of fishing gear in section 275.

### ***Section 277: Further provision about forfeiture under section 275 or 276***

700. This section gives effect to Schedule 18 which makes detailed provision in respect of the forfeiture under section 275 or 276 of gear or fish which fail to meet size requirements.

### ***Section 278: Forfeiture by court following conviction***

701. This section applies where, after a successful prosecution under fisheries legislation, the court orders the forfeiture of the fish or gear in respect of which the offence was committed. The relevant authority will be ordered to take possession of the property and may dispose of it as it sees fit. The proceeds of any sale may be retained by the relevant authority and the court may order the defendant to pay the costs of the relevant authority in storing the property.

## **Detention of vessels in connection with court proceedings**

### ***Section 279: Power to detain vessels in connection with court proceedings***

702. This section allows an enforcement officer to detain a vessel to ensure the attendance of the alleged offenders in court and the payment of any fine on conviction. The enforcement officer has the power to direct the vessel to port and a power to hold the vessel in port or require the person in charge of the vessel to do so.

703. The section provides that the power to detain may be used where an enforcement officer has reasonable grounds to suspect that an offence has been committed by the owner, master or charterer of a fishing vessel. Furthermore, in order to detain a vessel, the enforcement officer must either believe that court proceedings will be commenced in respect of the offence committed and there is a real risk that the alleged offenders will not attend court unless the vessel is detained, or the enforcement officer must suspect that following a conviction and imposition by the court of a fine, the court is likely to use its detention powers until all fines have been paid.

704. This section gives an enforcement officer powers to take the vessel and its crew to the nearest convenient port and detain the vessel there. A convenient port may not be the nearest in terms of distance, but it may be, for example, the nearest one able to take the size of the vessel, provide a berth or suitable storage.

705. An enforcement officer is required to issue a written notice to the person in charge of the vessel stating why the vessel has been detained and the circumstances in which it would be released.

***Section 280: Release of vessels detained under section 279***

706. This section makes provision for the release of a vessel which is being detained under section 279. The vessel ceases to be detained if: the notice for detention is withdrawn; the vessel is released by order of the court; proceedings associated with the vessel's detention have concluded; or the court exercises its power to detain the vessel.
707. An enforcement officer may withdraw a notice of detention at any time and such a notice must be withdrawn if any of the grounds for release are met: either that the relevant authority has decided to take no proceedings in respect of the vessel or if there is no longer reason to believe either that the person in question would fail to attend court or that a court would order detention of the vessel.

***Section 281: Power of court to order release of vessels***

708. This section applies in circumstances where a vessel has been detained under section 279. It provides a power for the court to order the release of the vessel. An order may be made by the court if it is satisfied that the continued detention of the vessel under section 279 is no longer necessary. This might be either because the continued detention of the vessel is not necessary to secure any person's attendance at court or because following conviction the court would not order the vessel to be detained.

***Section 282: Bonds for release of vessels***

709. This section gives the relevant authority power to enter into an agreement with the owner or charterer of the vessel (or any of the owners or charterers of the vessel) to release a vessel detained under section 279 when a monetary security has been paid. The amount of the security will be settled by the two parties to the agreement. The relevant authority may impose conditions on the person who provides security.
710. The security must be returned if any of the grounds for release set out in *subsection (5)* are met.
711. Where the court imposes a fine, it may order that any money paid as security should be used towards the payment of the fine. If the fine imposed is less than the security that was paid, any surplus money must be returned to the person who provided the security.

***Section 283: Power of court to order repayment of bonds***

712. Where a bond has been paid pursuant to section 282 (and the notice of detention withdrawn) the court may order repayment of the bond to the person who provided the security if it is satisfied that the continuation of the bond is not necessary to ensure the attendance in court of the master, owner or charterer, or that, had the bond not been given, the court would not have ordered the detention of the vessel.

**Production of equipment**

***Section 284: Power to require production of certain equipment***

713. An enforcement officer may request anybody on board a fishing boat to produce any automatic recording or transmitting equipment as set out in *subsection (2)*.

**Supplementary**

***Section 285: Service of notices, etc***

714. This section specifies the means by which notices required to be served under this Chapter must be served. Such notices are to be delivered in person, left at an appropriate address or sent by post. In relation to the owner of a vessel the appropriate address is further defined by reference to the address given in the appropriate register. The section

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

stipulates the appropriate address for other persons, including firms and companies and unincorporated associations registered or doing business outside the UK.

***Section 286: Conclusion of proceedings***

715. This section establishes a means of determining when proceedings have been concluded. Where proceedings are terminated by an appealable decision, they are not to be considered as concluded until the time for making an appeal has passed, or, if an appeal is brought, until the conclusion of the appeal. This is significant for various purposes in this Chapter, for example in triggering the release of a vessel that has been detained.

***Section 287: Interpretation of this Chapter***

716. This section provides definitions for words or terms used in this Chapter.