

MARINE AND COASTAL ACCESS ACT 2009

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

Schedule 18: Forfeiture of Property under Section 275 Or 276

1003. *Schedule 18* makes detailed provision in respect of the forfeiture of gear or fish which fail to meet size requirements under sections 275 and 276. The Schedule provides that notice must be served on the person who appears to the relevant authority to be the owner (or any of the owners) at the time of the seizure (and if the property was seized from a vessel then also the master, owner or charterer at that time) and states that the notice must set out the reason for the intended forfeiture action, together with the details of how a notice of claim may be made. Provision is made covering delivery of the notice of intended forfeiture.
1004. A person disputing that the property is liable to forfeiture may submit a notice of claim. Provision is made as to the time limits for submitting such a notice and the details that it must include. If no notice of claim is made then the property is automatically forfeit. If a valid notice is submitted then the property must either be returned or the relevant authority must bring forfeiture proceedings in a court. In forfeiture proceedings the court may either order forfeiture of the property or, if it is not satisfied that the property is forfeitable, may order it to be returned. If the property is not collected by the appropriate owner after the three-month period for collection has lapsed, then the relevant authority may dispose of the property as it sees fit, provided that at the time of disposal it cannot be returned immediately to the person to whom it is required to be returned.
1005. The Schedule also gives the relevant authority the power to destroy any fish which are liable to be treated as forfeit or condemned even if they have not actually been forfeited or condemned. Where the court is not satisfied that the destroyed fish were forfeitable, it has the power to order the relevant authority to pay the claimant the market value of the fish at the time they were seized, determined by a Court-appointed referee. Accepting this payment prevents a claimant maintaining an action in respect of the seizure, detention or destruction of the fish. Further provision is made concerning the detail of the forfeiture proceedings (including matters as to proof), the effect of forfeiture, how property is to be disposed of, who may be a referee and provisions on partnerships.