



Marine and Coastal Access Act 2009

2009 CHAPTER 23

PART 8

ENFORCEMENT

CHAPTER 4

FISHERIES ENFORCEMENT POWERS

Seizure for purposes of forfeiture

268 Power to seize fish for purposes of forfeiture

- (1) An enforcement officer who has the power conferred by this section may seize and detain or remove any fish in respect of which the officer reasonably believes a relevant offence has been committed.
- (2) The power conferred by this section may only be exercised for the purposes of securing that, in the event of a conviction for a relevant offence, the court may exercise any relevant power of forfeiture in relation to fish in respect of which the offence was committed.
- (3) Where—
 - (a) any fish which an enforcement officer wishes to seize and remove are in a container, and
 - (b) the officer reasonably considers that it would facilitate the seizure and removal of the fish if they remained in the container for that purpose,any power to seize and remove the fish includes power to seize and remove the container.
- (4) Where—
 - (a) any fish which an enforcement officer wishes to seize and remove are not in a container, and

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- (b) the officer reasonably considers that it would facilitate the seizure and removal of the fish if they were placed in a container suitable for that purpose, the officer may require the fish to be placed into such a container.
- (5) If, in the opinion of an enforcement officer, it is not for the time being practicable for the officer to seize and remove any fish, the officer may require—
- (a) the person from whom the fish are being seized, or
 - (b) where the officer is exercising a power of inspection conferred by section 246, 247 or 248, any person in or on the relevant premises,
- to secure that the fish are not removed or otherwise interfered with until such time as the officer may seize and remove them.
- (6) Where an enforcement officer is exercising a power of inspection conferred by section 246, 247 or 248, the officer may require any person in or on the relevant premises to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of any power conferred by this section.
- (7) Where an enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may require that person to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise in relation to that person of any power conferred by this section.
- (8) In this section—
- “relevant activity”, in relation to an enforcement officer, means any activity in respect of which the officer has functions;
- “relevant power of forfeiture” means any power of a court to order the forfeiture of any fish in respect of which an offence has been committed;
- “the relevant premises”, in relation to an enforcement officer exercising a power of inspection conferred by section 246, 247 or 248, means the vessel, marine installation, premises or vehicle in relation to which the power is being exercised.

269 Power to seize fishing gear for purposes of forfeiture

- (1) An enforcement officer who has the power conferred by this section may seize and detain or remove any fishing gear which the officer reasonably believes has been used in the commission of a relevant offence.
- (2) The power conferred by this section may only be exercised for the purposes of securing that, in the event of a conviction for a relevant offence, the court may exercise any relevant power of forfeiture in relation to fishing gear used in the commission of the offence.
- (3) If, in the opinion of an enforcement officer, it is not for the time being practicable for the officer to seize and remove any fishing gear, the officer may require—
- (a) the person from whom the fishing gear is being seized, or
 - (b) where the officer is exercising a power of inspection conferred by section 246, 247 or 248, any person in or on the relevant premises,
- to secure that the fishing gear is not removed or otherwise interfered with until such time as the officer may seize and remove it.

- (4) Where an enforcement officer is exercising a power of inspection conferred by section 246, 247 or 248, the officer may require any person in or on the relevant premises to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of any power conferred by this section.
- (5) Where an enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may require that person to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise in relation to that person of any power conferred by this section.
- (6) In this section—
 - “relevant activity”, in relation to an enforcement officer, means any activity in respect of which the officer has functions;
 - “relevant power of forfeiture” means any power of a court to order the forfeiture of any fishing gear used in the commission of an offence;
 - “the relevant premises”, in relation to an enforcement officer exercising a power of inspection conferred by section 246, 247 or 248, means the vessel, marine installation, premises or vehicle in relation to which the power is being exercised.

270 Procedure in relation to seizure under section 268 or 269

- (1) An enforcement officer who seizes any property under section 268 or 269 must, if it is reasonably practicable to do so, serve a notice on each of the following persons—
 - (a) every person who appears to the officer to have been the owner, or one of the owners, of the property at the time of its seizure;
 - (b) in the case of property seized from a vessel, the master, owner and charterer (if any) of the vessel at that time;
 - (c) in the case of property seized from premises, every person who appears to the officer to have been an occupier of the premises at that time;
 - (d) in any other case, the person (if any) from whom the property was seized.
- (2) The notice must state—
 - (a) what has been seized;
 - (b) the reason for its seizure;
 - (c) the offence which the officer believes has been committed;
 - (d) any further action that it is proposed will be taken;
 - (e) that, unless the property is liable to forfeiture under section 275 or 276, it is to be detained until such time as it is released or its forfeiture is ordered by the court.
- (3) Subsections (4) and (5) apply in a case where the property was seized following an inspection carried out in exercise of the power conferred by section 264.
- (4) The officer must serve a copy of the report referred to in section 265 on every person falling within paragraph (a) of subsection (1) above at the same time as the officer serves a notice on that person under this section.
- (5) In a case where the officer, after taking reasonable steps to do so, is unable to identify any person as owning the property—

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- (a) any reference in this section to a requirement to serve a notice on that person is to be read as a reference to a requirement to take such steps as the officer thinks fit to bring the contents of the notice to the attention of persons likely to be interested in it, and
- (b) the reference in subsection (4) to serving a copy of the report referred to in section 265 is to be read as a reference to taking the steps referred to in subsection (10)(a) of that section.

271 Retention of property seized under section 268 or 269

- (1) Any property seized by an enforcement officer under section 268 or 269 may be retained by the relevant authority.
- (2) If either of the grounds for release in subsection (3) applies, the relevant authority must, as soon as is reasonably practicable, make the property available for collection.
- (3) The grounds for release referred to in subsection (2) are—
 - (a) that the relevant authority has decided not to take proceedings in respect of any offence in relation to which the property was seized;
 - (b) that any proceedings taken in respect of such an offence have concluded without any order for forfeiture having been made.
- (4) But subsection (2) does not apply if the property is liable to forfeiture under section 275 or 276.

272 Bonds for release of seized fish or gear

- (1) This section applies to any property which is being retained by the relevant authority under section 271.
- (2) The relevant authority may enter into an agreement with any person falling within subsection (3) for security for the property to be given to the relevant authority by way of bond in return for the release of the property.
- (3) The persons referred to in subsection (2) are—
 - (a) the owner, or any of the owners, of the property;
 - (b) in the case of property seized from a vessel, the owner or charterer, or any of the owners or charterers, of the vessel.
- (4) Any bond given under this section is to be—
 - (a) for such amount as may be agreed, or
 - (b) in the event of a failure to agree an amount, for such amount as may be determined by the court.

“The court” means a magistrates’ court in England and Wales.
- (5) A person who gives a bond under this section must comply with such conditions as to the giving of the bond as the relevant authority may determine.
- (6) If either of the grounds for release mentioned in subsection (7) applies, then any bond given under this section must be returned as soon as possible.
- (7) The grounds for release referred to in subsection (6) are—
 - (a) that the relevant authority has decided not to take proceedings in respect of any offence in relation to which the property was seized;

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- (b) that any proceedings taken in respect of such an offence have concluded without any order for forfeiture having been made.
- (8) Any power which a court has to order the forfeiture of any fish or any fishing gear may instead be exercised in relation to any bond given under this section as security for that fish or fishing gear.

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

- (1) Any fish which are being retained by the relevant authority under section 271 may be sold by the authority.
- (2) Any power which a court has to order the forfeiture of any fish may instead be exercised in relation to the proceeds of any sale of the fish under this section.
- (3) Subject to subsection (6), the proceeds of any sale under this section may be retained by the relevant authority until such time as—
- (a) a court exercises any power it has to order the forfeiture of the proceeds, or
 - (b) either of the grounds for release mentioned in subsection (4) applies.
- (4) The grounds for release referred to in subsection (3) are—
- (a) that the relevant authority has decided not to take proceedings in respect of any offence in relation to which the fish were seized;
 - (b) that any proceedings taken in respect of such an offence have concluded without any order for forfeiture having been made.
- (5) If either of the grounds for release mentioned in subsection (4) applies, the relevant authority must, as soon as is reasonably practicable, release the proceeds of sale to any person who appears to the authority to have been the owner, or one of the owners, of the fish at the time of the seizure of the fish.
- (6) If the proceeds of sale are still in the relevant authority's possession after the end of the period of six months beginning with the date on which the fish were sold, the relevant authority may retain the proceeds and apply them in any manner it thinks fit.

The relevant authority may exercise its power under this subsection to retain and apply the proceeds of sale only if it is not practicable at the time when the power is exercised to dispose of the proceeds by releasing them immediately to the person to whom they are required to be released.

- (7) Subject to subsection (9), any fish sold under this section must be sold at auction.
- (8) Before selling the fish, the relevant authority must give the owner of the fish a reasonable opportunity to make representations as to the manner in which the fish are sold.
- (9) If—
- (a) the owner of the fish requests that the fish be sold—
 - (i) at a particular auction, or
 - (ii) by a method of sale other than auction,
 - and
 - (b) the relevant authority does not consider that it would be unreasonable to comply with that request,
- the relevant authority must comply with the request when selling the fish.

- (10) The relevant authority may deduct any reasonable expenses it has incurred in selling any fish under this section from the proceeds of the sale.
- (11) In a case where there is more than one owner of the fish, subsection (9) applies only if the request is made by or on behalf of all of them.

274 Disposal of property seized under section 268 or 269

- (1) This section applies to any property seized under section 268 or 269 which the relevant authority—
 - (a) no longer wishes to retain for any purpose, or
 - (b) is required to make available for collection by virtue of section 271.
- (2) In this section a “notice of collection” is a notice stating that—
 - (a) the property specified in the notice is available to be collected from the location so specified, and
 - (b) if the property is not collected before the end of the period of three months beginning with the date specified in the notice, the relevant authority will dispose of the property.
- (3) The relevant authority must serve a notice of collection on every person who appears to the authority to be the owner, or one of the owners, of the property.
- (4) The relevant authority may take any other steps it considers appropriate to notify every such person that the property is available to be collected.
- (5) If the relevant authority, after taking reasonable steps to do so, is unable to identify any person as owning the property, the relevant authority must—
 - (a) if it is reasonably practicable to do so, serve a notice of collection on every person who is an appropriate person for the purposes of this subsection, and
 - (b) take such steps as it thinks fit to bring the information contained in the notice of collection to the attention of persons likely to be interested in it.
- (6) For the purposes of subsection (5), the following persons are “appropriate persons”—
 - (a) in the case of property seized from a vessel, the master, owner and charterer (if any) of the vessel at the time of the seizure of the property;
 - (b) in the case of property seized from premises, every person who appears to the relevant authority to have been an occupier of the premises at that time;
 - (c) in any other case, the person (if any) from whom the property was seized.
- (7) If the relevant authority complies with subsection (3) or subsection (5), as the case may be, the relevant authority may, at the end of the period mentioned in subsection (2)(b), dispose of the property in whatever way it thinks fit.