Draft Regulations laid before Parliament under section 316(6) of the Marine and Coastal Access Act 2009, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No.0000

RIVER, ENGLAND
RIVER, SCOTLAND

SALMON AND FRESHWATER FISHERIES

The Keeping and Introduction of Fish (England and River Esk Catchment Area) Regulations 2015

Made - - - - ***

Coming into force - - *19th January 2015*

A draft of this instrument has been approved by each House of Parliament in accordance with section 316(6)(**1**) of the Marine and Coastal Access Act 2009(**2**).

The Secretary of State, in exercise of the powers conferred by sections 232(1)(**3**), (5)(a), (d), (e), (h), (i) and (j) and (7) and 316(1) and (2) of the Marine and Coastal Access Act 2009, makes the following Regulations.

PART 1

INTRODUCTION

Citation, commencement and application

1.—(1) These Regulations—

(a) may be cited as the Keeping and Introduction of Fish (England and River Esk Catchment Area) Regulations 2015; and

(b) come into force on 19th January 2015.

(2) With the exception of Part 5, these Regulations apply in relation to live fish in—

(a) England, and

(**1**) Section 316(10)(a) defines "draft affirmative procedure" for the purposes of section 316(6).
(**2**) 2009 c. 23. Section 232 was amended by S.I. 2013/755.
(**3**) The term "the appropriate national authority" is defined in section 232(8).

(b) so much of the catchment area of the River Esk as is in Scotland.

Interpretation

2. In these Regulations—

"the Agency" means the Environment Agency;

"fish" means fish or the spawn of fish and includes molluscs and crustaceans;

"inland waters" means any water of a kind specified in section 221 of the Water Resources Act 1991(**4**) except that it does not include—

(a) the River Tweed, or

(b) garden ponds less than 0.4 hectares in area, which are not fished, have no links to other waters and are located within the curtilage of a residential property;

"keeping", in relation to fish, means having, owning or controlling fish in inland waters;

"permit" means a permit granted or to be granted under regulation 6(l);

"premises", except in regulation 3, means—

(a) any land, artificial island, marine installation or structure;

(b) any vehicle; or

(c) any vessel;

"vehicle" includes a trailer;

"vessel" includes any ship or boat or other vessel used in navigation, and any hovercraft, submersible craft or other floating craft, but does not include anything that permanently rests on, or is permanently attached to, the sea bed.

Exclusions

3. These Regulations do not apply in relation to activities which take place—

(a) on the premises of an aquaculture production business authorised under regulation 6 of the Aquatic Animal Health (England and Wales) Regulations 2009(**5**); or

(b) during transportation between—

(i) the premises of any such business; or

(ii) the premises of one such business and the premises of another such business.

PART 2

OFFENCES RELATING TO THE INTRODUCTION AND KEEPING OF FISH

Introduction of fish

4. A person who, otherwise than under and in accordance with the terms of a permit granted under regulation 6 held by that person—

(a) introduces fish into inland waters,

(b) has in his possession fish for the purposes of their introduction into inland waters, or

(c) causes or allows any other person to introduce fish into inland waters

(**4**) 1991 c. 57.
(**5**) S.I. 2009/463.

commits an offence.

Keeping fish

5.—(1) A person who keeps in inland waters, otherwise than under and in accordance with the terms of a permit granted under regulation 6, any fish of a kind to which this regulation applies commits an offence.

(2) This regulation applies to any fish which belongs to a taxonomic order specified in Part 1 of the Schedule and is not of a species specified in Part 2 of the Schedule.

(3) In relation to a protected area, this regulation also applies to fish of any species which would otherwise be absent from that area.

(4) In paragraph (3) a "protected area" is—

(a) a site of special scientific interest, as defined by section 52(1) of the Wildlife and Countryside Act 1981(**6**);

(b) a European site or European marine site as defined by regulation 8 of the Conservation of Habitats and Species Regulations 2010(**7**);

(c) a wetland designated under paragraph 1 of article 2 of the Ramsar Convention, as defined by section 37A(4) and (5) of the Wildlife and Countryside Act 1981(**8**).

PART 3

PERMITS

Grant of permit

6.—(1) On receipt of an application for a permit authorising the carrying on of any of the activities mentioned in paragraph (2), the Agency may grant such a permit.

(2) The activities to which paragraph (1) refers are—

(a) the keeping of fish of a kind to which regulation 5 applies in inland waters;

(b) the introduction of fish into inland waters.

(3) A permit may be granted subject to such conditions as the Agency may see fit.

(4) In particular, conditions may be imposed—

(a) to limit the number of fish introduced into, or kept in, any inland waters;

(b) to minimise the risk of fish escaping from any inland waters;

(c) to ensure that the keeping or movement of fish is not harmful to the environment or to any fishery in waters that are connected to each other (including waters connected by a floodplain);

(d) in relation to the keeping and retention of records for any activity authorised by the permit;

(e) in relation to the disposal of fish;

(f) setting out the circumstances in which a permit holder must notify the Agency; and

(g) limiting the time for which the permit is valid, so that the keeping of specified fish in inland waters is only allowed as a temporary measure.

(**6**) 1981 c. 69. Relevant amendments to section 52(1) were made by section 75(1) of, and paragraph 5(1) and (2) of Schedule 9 to, the Countryside and Rights of Way Act 2000 (c. 37).
(**7**) S.I. 2010/490. Regulation 8 was amended by S.I. 2012/1927.
(**8**) Section 37A was inserted by section 77 of the Countryside and Rights of Way Act 2000 (c. 37).

(5) In this regulation, "movement of fish" means removal of fish from, or introduction of fish into, inland waters.

PART 4

ENFORCEMENT AND ADMINISTRATION

Revocation etc. of a permit

7.—(1) The Agency may, by notice served on the holder of a permit, suspend or revoke the permit—

(a) if any condition of the permit is breached, or

(b) if the environmental conditions of the inland waters to which the permit relates have changed since the date on which the permit was granted, such that the Agency considers that a suspension or revocation of the permit is necessary.

(2) The Agency may, by notice served on the holder of a permit, vary the permit if in the Agency's opinion the permit requires revision.

(3) The Agency may suspend, vary or revoke a permit at the request of the holder of that permit.

Notice to remove and dispose of fish

8.—(1) If fish are introduced into inland waters or kept in contravention of these Regulations, the Agency may serve a notice on the holder of a permit or, if there is none, the owner or occupier of those waters requiring the holder of the permit or the owner or occupier (as the case may be)—

(a) to remove and dispose of fish—

(i) in a manner specified in the notice, and

(ii) at the expense of the holder of the permit or the owner or occupier; and

(b) to take steps to ensure that the position is, as far as possible, restored to what it would have been had the Regulations not been contravened.

(2) If a notice under paragraph (1) is not complied with, the Agency may arrange for—

(a) the removal and disposal of fish; and

(b) the taking of steps to ensure that the position is, as far as possible, restored to what it would have been had these Regulations not been contravened.

(3) The Agency may remove and dispose of fish without serving notice under paragraph (1)—

(a) in an emergency; or

(b) if the holder of the permit or the owner or occupier cannot be ascertained.

(4) Where the Agency acts under paragraph (2) or (3)(a), it may do so at the expense of the holder of the permit or the owner or occupier of inland waters and any amount that falls to be repaid may be recovered by the Agency as a civil debt.

(5) Failure to comply with a notice under paragraph (1) without reasonable excuse is an offence.

Time in which a notice takes effect

9.—(1) Subject to paragraph (2) and (3), a notice served under regulation 7(1) or (2) or regulation 8(1) takes effect 28 days after the date on which it was served.

(2) Where the notice specifies a period, the notice takes effect on the expiry of that period.

(3) Where an appeal under regulation 10 is brought, the notice does not take effect until the appeal has been determined or withdrawn, unless the appointed person determining the appeal so directs.

Appeals

10.—(1) An applicant for the grant of a permit may appeal against—

(a) a refusal to grant it, or

(b) the imposition of any condition.

(2) The holder of a permit or an owner or occupier of inland waters served with a notice under regulation 7(1) or (2) or regulation 8(1) may appeal against that notice.

(3) The appellant must serve written notice of appeal on the Agency within 28 days from the date on which notification of the decision being appealed against was given.

(4) On receipt of a notice of appeal, the Agency must appoint an independent person to determine the appeal.

(5) The appeal is by way of written representations from the Agency and the appellant, and is subject to any time limits determined by the independent person.

(6) The independent person decides whether to allow the appeal (and may direct the Agency to grant a permit or to vary any condition).

Powers of entry

11.—(1) An officer of the Agency may, on producing a duly authenticated authorisation if required, enter any premises (except any premises used wholly as a private dwelling house) at any reasonable hour—

(a) where the officer has reason to suspect that an offence under these Regulations has been, or is about to be, committed; or

(b) for the purposes of exercising the powers conferred by regulation 7(1)(b) or regulation 8(3), or for investigating whether any of those powers are exercisable.

(2) The officer may be accompanied by such other persons, and may use any such vehicles, vessels or equipment as the officer considers necessary.

(3) An officer may enter any premises (or any part of premises) which are a private dwelling only if a justice of the peace has issued a warrant authorising the officer to do so.

(4) If a justice of the peace, on sworn information in writing, is satisfied that there are reasonable grounds for entry into any premises for the purposes described in paragraph (1), and either—

(a) admission has been refused, or a refusal is expected, and (in either case) notice to apply for a warrant has been given to the occupier,

(b) asking for admission for giving such notice would defeat the object of the entry,

(c) the case is one of urgency, or

(d) the premises are unoccupied or the occupier is temporarily absent,

the justice may by signed warrant authorise the officer to enter the premises, if need be by reasonable force.

(5) A warrant under this regulation is valid for one month.

(6) An officer who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as they were before entry.