

2009 No. 3344

FISHERIES, ENGLAND AND WALES

RIVER, ENGLAND AND WALES

The Eels (England and Wales) Regulations 2009

Made - - - - - *14th December 2009*
Laid before Parliament *21st December 2009*
Laid before the National Assembly for Wales *21st December 2009*
Coming into force - - - *15th January 2010*

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The Secretary of State and the Welsh Ministers are each designated (a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the common agricultural policy.

The Secretary of State in relation to England and the Welsh Ministers in relation to Wales make these Regulations under the powers conferred by that section.

PART 1

General

Title, commencement and application

1. These Regulations—

- (a) may be cited as the Eels (England and Wales) Regulations 2009;
- (b) come into force on 15th January 2010;
- (c) apply in England and Wales;

(a) S.I. 1972/1811 and S.I. 2005/2766. By virtue of section 162 of, and paragraphs 28 and 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32), the designation made in relation to the National Assembly for Wales by S.I. 2005/2766 is transferred to the Welsh Ministers.

(b) 1972 c.68.

- (d) do not apply to so much of the River Tweed as is situated within the Tweed District as defined by the Scotland Act 1998 (River Tweed) Order 2006(a).

Interpretation

2. In these Regulations—

“the Agency” means the Environment Agency;

“appointed person” has the meaning given in paragraph 2 of the Schedule;

“dam” means any structure designed to confine, direct, or control water and includes weirs;

“diversion structure” means any conduit or channel by which water is abstracted from its usual channel or bed or from the sea, or by which water is returned to that (or another) channel, bed or sea;

“eels” means any fish of the species *Anguilla anguilla*, and includes elvers and glass eels;

“eel pass” means any device, opening or structure that allows the passage of eels around, over or through any dam or obstruction;

“eel screen” means any device, moving or stationary, that is designed to impede the passage of eels through a diversion structure;

“England” includes the territorial sea adjacent to England not forming any part of Wales;

“fish pass” means any device, opening or structure that facilitates the passage of fish around, over or through any dam or obstruction;

“obstruction” means anything (whether natural or artificial) in or near waters that impedes, or is likely to impede, the passage of eels through those waters;

“Wales” has the same meaning as in section 158 of the Government of Wales Act 2006(b).

PART 2

Records and restocking

Eel catch returns

3.—(1) This regulation applies in relation to any person who, having been granted any licence or other authorisation to fish for eels with any instrument other than rod and line, is required to submit an eel catch return(c).

(2) A person completing an eel catch return must record—

- (a) the total weight of eels caught of 12 centimetres or less in length;
- (b) the total weight of those eels retained but dead;
- (c) the total weight of those eels retained alive;
- (d) the dates on which the eels were caught;
- (e) the locations where the eels were caught;
- (f) the destination of retained eels.

(3) Failure to comply with paragraph (2) is an offence.

(a) S.I. 2006/2913.

(b) 2006 c. 32.

(c) Eel catch returns are required by the National Fisheries Byelaws Phase 2 2001 made under the Water Resources Act 1991 (c.57).

Records

4.—(1) An aquaculture production business operator must keep a record, in such form and manner as the Agency may specify, of—

- (a) any eels of 12 centimetres or less received at their aquaculture production business;
- (b) the name and fishing licence identification number of the person who caught the eels;
- (c) the destination of any such eels sold.

(2) The aquaculture production business operator must provide the Agency with a copy of the record at such intervals as the Agency may specify and must allow the Agency to inspect the record at any reasonable time.

(3) Failure to comply with paragraph (1) or (2) is an offence.

Imports

5.—(1) Any person who imports live eels into England or Wales must—

- (a) record the name of the aquaculture production business (if any) from which the eels were obtained;
- (b) where the eels were obtained directly from the person who caught them, record the name and fishing licence identification number of that person and the eel river basin in which the eels were caught; and
- (c) prepare, sign and date a certificate to that effect.

(2) Failure to comply with paragraph (1) is an offence.

Exports

6.—(1) Any person who exports live eels from England or Wales must—

- (a) record where and the date on which the eels were obtained, including the name of the aquaculture production business, the food business or the eel river basin in which the eels were caught (as the case may be) and, in the case of eels obtained from an eel river basin, the name and fishing licence identification number of the person who caught the eels;
- (b) be satisfied that eels obtained from an eel river basin are caught in a manner consistent with the eel management plan prepared for that eel river basin; and
- (c) prepare, sign and date a certificate to that effect.

(2) For the purposes of this regulation an eel management plan is a plan marked as such^(a), dated October 2009 and deposited at the offices of the Secretary of State for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR.

(3) Failure to comply with paragraph (1) is an offence.

Duties on consignees

7.—(1) A person must not accept a consignment of eels unless it is accompanied by—

- (a) a certificate prepared under regulation 5 or 6;
- (b) where eels have been added to the consignment, a copy of the certificate accompanying the other consignment.

(2) The consignee must retain all certificates for 12 months from the date of the certificates and allow the Agency to inspect the certificates at any reasonable time.

(3) Failure to comply with paragraph (1) or (2) is an offence.

(a) Eel management plans, for illustrative purposes only, can be accessed on <http://www.defra.gov.uk/foodfarm/fisheries/freshwater/fishman.htm#emp> but the version deposited at the offices of the Secretary of State is the definitive version.

Restocking

8.—(1) The Agency may, by service of a notice, require an aquaculture production business operator to place on the market, for use in the restocking of eel river basins, eels of 12 centimetres or less held by the business.

(2) A notice must specify—

(a) the amount of eels to be offered for restocking in accordance with the formula—

$$A = \frac{X_n T v}{V} - R$$

Where—

A is the amount of eels of 12 centimetres or less to be placed on the market for restocking;

R is the amount of eels of 12 centimetres or less restocked so far by or under the direction of the Agency into eel river basins in the year the notice is issued;

T is the amount of eels of 12 centimetres or less recorded in eel catch returns referred to in regulation 3 and submitted to the Agency in the year preceding the year in which the notice is issued;

v is the amount of eels of 12 centimetres or less recorded so far under regulation 4 by the aquaculture production business in the year the notice is issued;

V is the total amount of eels of 12 centimetres or less recorded so far under regulation 4 by all aquaculture production businesses in the year the notice is issued; and

X_n is 0.35 when *n* is the year 2010, 0.40 when *n* is the year 2011, 0.50 when *n* is the year 2012 and 0.60 when *n* is the year 2013 or later;

(b) the period during which the eels are to be placed on the market.

(3) Any person who purchases eels placed on the market under paragraph (1) must make a declaration to the effect that the eels will be used for restocking in an eel river basin within 6 months from the date of the declaration.

(4) Failure to comply with a notice served under paragraph (1) or to make a declaration under paragraph (3) is an offence.

(5) A person who fails to restock in accordance with a declaration made under paragraph (3) commits an offence.

Interpretation

9. In this Part—

“aquaculture production business” and “aquaculture production business operator” have the same meaning as in Council Directive 2006/88/EC^(a) on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals;

“eel river basin” is a river basin that has been identified as a natural habitat for eels in accordance with Article 2(1) of Council Regulation (EC) No 1100/2007^(b) establishing measures for the recovery of the stock of European eel.

(a) OJ No L 328, 24.11.2006, p14; corrected by OJ No L 140, 1.6.2007, p59, OJ No L 239, 12.9.2007, p70.

(b) OJ No L 248, 22.9.2007, p17.

PART 3

Eel Licences

Close season

10.—(1) Notwithstanding section 25 of the Salmon and Freshwater Fisheries Act 1975(a), a person who fishes for eels by means other than rod and line during the close season commits an offence.

(2) But this regulation does not apply to a person to the extent that they are acting—

- (a) for some scientific or fisheries management purpose;
- (b) with the written authority of the Agency; and
- (c) in accordance with any conditions imposed by the Agency in relation to that authority.

(3) For the purposes of this regulation, the close season(b) is—

- (a) for eels of 12 centimetres or less in length, the period beginning on 26th May 2010 and ending on 14th February 2011; and
- (b) for all other eels, the period beginning on 1st October 2010 and ending on 31st March 2011.

Reduction of fishing effort

11.—(1) This regulation applies where the Agency determines that a reduction in the fishing effort for eels is required in order to comply with Article 5(4) of Council Regulation (EC) No 1100/2007.

(2) Notwithstanding section 25 of the Salmon and Freshwater Fisheries Act 1975, the Agency may, by service of a notice, revoke any licence to fish for eels by means other than rod and line granted for the period beginning on 1st January 2010 and ending on 31st December 2010.

PART 4

Passage of eels

Construction, alteration etc of obstruction

12.—(1) This regulation applies to—

- (a) the construction of a new dam;
- (b) alterations or maintenance made to an existing dam that are likely to affect the passage of eels around, over or through the dam;
- (c) the construction or maintenance of a structure in or near waters that amounts to, or is likely to amount to, an obstruction.

(2) Any person who constructs, alters or maintains a dam or structure must first notify the Agency.

(3) An application for, or variation of, a licence to abstract water or for impounding works under section 24 or 25 of the Water Resources Act 1991(c) is deemed to be notification for the purposes of this regulation.

(4) Failure to comply with paragraph (2) is an offence.

(a) 1975 c. 51.

(b) Subsequent close seasons will be set down in byelaws made under the Water Resources Act 1991.

(c) 1991 c. 57.

Reporting an obstruction

13.—(1) A responsible person must immediately notify the Agency of any obstruction occurring since the coming into force of these Regulations.

(2) Failure to comply with paragraph (1) is an offence.

Eel passes

14.—(1) This regulation applies where the Agency determines that the passage of eels is impeded or likely to be impeded by—

- (a) a dam or obstruction in or near waters to which these Regulations apply;
- (b) any works notified to the Agency under regulation 12; or
- (c) any obstruction notified to the Agency under regulation 13.

(2) The Agency may, by service of a notice, require a responsible person, at their own cost, to—

- (a) construct an eel pass;
- (b) make alterations to an existing eel or fish pass;
- (c) operate an existing eel pass in accordance with any conditions stated in the notice;
- (d) remove an obstruction; or
- (e) take any other action specified in the notice.

(3) The notice—

- (a) may not require anything that interferes with any statutory right of navigation;
- (b) may require the responsible person to submit plans for an eel pass or for alterations to an existing eel pass or fish pass to the Agency for approval;
- (c) must give the date by which such plans must be submitted;
- (d) may require the construction of an eel pass, or alterations to an existing eel or fish pass, to be carried out in accordance with plans approved by the Agency.

(4) The Agency may, by service of a further notice, require the responsible person—

- (a) to operate any eel pass constructed or altered, or any fish pass altered, under this regulation in accordance with any conditions stated in the notice;
- (b) to make any alterations to an eel pass constructed or altered or to any fish pass altered under this regulation.

(5) Failure to comply with a notice served under paragraph (2) or (4) is an offence.

Maintenance and repair of eel pass

15.—(1) A responsible person must, at their own cost, maintain an eel pass in an efficient state.

(2) Failure to comply with paragraph (1) is an offence.

Damaging or obstructing eel pass

16.—(1) A person must not damage, interfere with, obstruct or do anything that impedes the passage of eels through an eel pass.

(2) Failure to comply with paragraph (1) is an offence.

Eel screens

17.—(1) This regulation applies to—

- (a) any diversion structure capable of abstracting at least 20 cubic metres of water through any one point in any 24-hour period; and

(b) any diversion structure returning water to a channel, bed or sea.

(2) Before 1st January 2015, the Agency may, by service of a notice, require a responsible person to place an eel screen in a diversion structure.

(3) The notice may specify the dimensions and type of screen and where it is to be placed in the diversion structure.

(4) On or after 1st January 2015, a responsible person must ensure an eel screen is placed in a diversion structure.

(5) The Agency may, by service of a notice—

(a) exempt the responsible person from the requirement in paragraph (4); or

(b) require the responsible person, at their own cost, to alter the dimensions (including mesh size) and the placement of any screen placed under paragraph (4) to those specified in the notice.

(6) It is an offence to fail to comply with—

(a) a notice served under paragraph (2) or (5)(b); or

(b) paragraph (4).

By-wash

18.—(1) This regulation applies where an eel screen placed in accordance with regulation 17 is located at a point in the diversion structure other than at the entrance to the conduit or channel by which the water is abstracted.

(2) A responsible person must provide a continuous by-wash immediately upstream from the eel screen which allows eels to return by as direct route as practicable to the waters from which they entered the diversion structure.

(3) Failure to comply with paragraph (2) is an offence.

Eel screens and by-wash

19.—(1) A responsible person must ensure that an eel screen or by-wash—

(a) does not interfere with any statutory right of navigation;

(b) is constructed and located, so far as reasonably practicable, so that eels are not injured or damaged by it;

(c) is maintained in an efficient state.

(2) A person must not damage or interfere with an eel screen or do anything that impedes the free passage of eels through a by-wash.

(3) Failure to comply with paragraph (1) or (2) is an offence.

Action by the Agency

20.—(1) Any action required under this Part may be carried out by the Agency instead of the responsible person—

(a) in an emergency;

(b) if the responsible person cannot be ascertained; or

(c) if the responsible person fails to comply with a notice.

(2) The responsible person is liable for any reasonable costs incurred by the Agency in taking any action under this regulation.

Abstraction and impounding works licences

21.—(1) Notwithstanding sections 24 and 25 of the Water Resources Act 1991, any action required by the Agency under this Part does not constitute an abstraction or impounding works for the purposes of that Act.

(2) A notice served under this Part may disapply any condition relating to the passage of eels in an abstraction or impounding works licence granted under that Act.

Interpretation

22. In this Part a “responsible person” in relation to a dam, diversion structure or obstruction means the owner, occupier or person in charge of the land on which the dam, structure or obstruction lies.

PART 5

Notices and appeals

Notices

23.—(1) A notice served under these Regulations must—

- (a) be in writing;
- (b) describe the action required;
- (c) give reasons for the action required;
- (d) specify the date by which the action must be taken or any designation will take effect; and
- (e) except for a notice served under regulation 8 or 11, inform the person on whom the notice is served of the right of appeal under regulation 25.

(2) A notice may be amended, suspended or revoked, by service of a further notice, at any time.

Service of notices

24.—(1) A notice served under these Regulations may be served on a person by—

- (a) delivering it to the person;
- (b) leaving it at the person’s proper address; or
- (c) sending it by post or electronic means to that person’s address.

(2) Where the person on whom a notice is served is a body corporate, the notice is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of this regulation and section 7 of the Interpretation Act 1978(a) (service of documents by post) in its application to this regulation, the proper address of any person to whom a notice is to be given is—

- (a) if the person has given an address for service, that address; and
- (b) if no address has been given—
 - (i) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body;
 - (ii) in any other case, the person’s last known address at the time of service.

(4) If the notice is transmitted electronically, it is to be treated as duly served if—

(a) 1978 c.30.

- (a) the person upon whom the notice is required or authorised to be served (“the recipient”) has indicated to the person serving the notice the recipient’s willingness to receive notices transmitted by electronic means and has provided an address suitable for that purpose; and
- (b) the notice is sent to the address provided.

Appeals

25.—(1) A person must notify the Secretary of State in England and Welsh Ministers in Wales (“the appropriate authority”) of an intention to appeal against a notice served under regulation 14(2) or (4), 17(2) or (5)(b).

(2) Notice of appeal must be served—

- (a) within 56 days of the date of a notice served under regulation 17(2) or (5)(b); or
- (b) within 28 days of the date of a notice served under regulation 14(2) or (4).

(3) The time limit may be extended by the appropriate authority.

(4) Procedures for the appeal are set out in the Schedule.

(5) The appointed person may confirm, amend or quash the notice, and must give written notification of the final decision and the reasons for it, and may, if appropriate, add further requirements necessitated by the lapse of time since the notice was served.

(6) A notice need not be complied with pending determination of an appeal unless the appropriate authority directs otherwise.

(7) The appellant may withdraw an appeal by notifying the appropriate authority and any person appointed to deal with the appeal.

PART 6

Enforcement and penalties

Entry and inspection of land etc

26.—(1) Any person designated in writing by the Agency to enforce these Regulations—

- (a) may enter and inspect any land, premises, dam, diversion structure, eel pass, fish pass or obstruction at any reasonable time for the purposes of administering and enforcing these Regulations;
- (b) may be accompanied by any person, equipment or vehicle as that person considers necessary;
- (c) may not enter any premises which are a dwelling unless a justice of the peace has issued a warrant authorising them to do so.

(2) A justice of the peace may only issue such a warrant if satisfied that there is good reason to believe that the person designated under paragraph (1) will not be able to enforce these Regulations without the warrant.

(3) A warrant issued under paragraph (2) remains in force—

- (a) for one month; or
- (b) until the purpose for which it is issued has been fulfilled,

whichever is the sooner.

(4) A person designated by the Agency under paragraph (1) may require any person—

- (a) to produce any document or record that is in that person’s possession or control;
- (b) to render any such document or record on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away.

Obstruction

27. It is an offence—

- (a) intentionally to obstruct any person acting in the execution of these Regulations;
- (b) to fail without reasonable cause to give to such person any assistance or information which that person may reasonably require for the purposes of that person's functions under these Regulations; or
- (c) knowingly or recklessly to give false or misleading information to such person.

Penalties

28.—(1) A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

(2) If an offence under these Regulations committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on that person's part,

the officer as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(3) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with their functions of management as if they were a director of the body.

(4) "Officer", in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

12th December 2009

Huw Irranca-Davies
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

14th December 2009

Elin Jones
Minister for Rural Affairs, one of the Welsh Ministers

SCHEDULE

Regulation 25

Appeals

1. Notification of appeal must contain—

- (a) a copy of the notice appealed against; and
- (b) the grounds of appeal.

2. Once notification of appeal is received, the appropriate authority must appoint within a reasonable time a person (“the appointed person”) to deal with the appeal and the appeal must be conducted by written procedure.

3. At the same time as notification is given to the appropriate authority, the appellant must send a copy of the notification and grounds of appeal to the Agency, and the Agency must immediately send a copy to any person who appears to it to have a particular interest in the subject matter of the appeal, and notify the appointed person, the appropriate authority and the appellant whom it has notified.

4. As soon as a person has been appointed under paragraph 2, the appropriate authority must notify the appellant of the time limit within which the appellant must provide to that person in writing and copied to the Agency—

- (a) a statement of case; and
- (b) all relevant correspondence.

5. On receiving the documentation listed in paragraph 4, the appointed person must—

- (a) give the Agency a time limit within which it must provide a written response;
- (b) notify any person notified under paragraph 3 of the time limit under sub-paragraph (a) and invite them to make representations before that date.

6. The appointed person must then decide whether further evidence is needed, and give directions accordingly.

7. The appointed person may make an unaccompanied inspection of the land or thing to which the notice relates but nothing entitles the appointed person to enter land in order to make an inspection where such access would be unlawful.

8. For the purposes of paragraph 7, access is lawful on any occasion if the appointed person may access the land on that occasion without committing an offence or trespassing on the land.

9. Following the conclusion of the appeal, the appointed person must decide the matter.

10. The appointed person may make such order as to the costs of the parties (including parties who make representations) as is fit.

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations implement Council Regulation (EC) No 1100/2007 (OJ No L 248, 22.9.2007, p17) establishing measures for the recovery of the stock of European eel.

Part 2 of the Regulations requires holders of licences to fish for eels other than by rod and line to submit eel catch returns to record information relating to eels caught of 12 centimetres or less in length (regulation 3). Aquaculture production business operators are also required to keep records of eels of less than 12 centimetres received (regulation 4) and to offer such eels for sale for use in restocking eel river basins (regulation 8). Consignments of live eels imported into, or exported from, England or Wales must be accompanied by a certificate identifying the origin of the eels and (where relevant) that eels for export were caught in a manner consistent with the relevant eel management plan (regulations 5 to 7).

Part 3 imposes close seasons on fishing for eels other than by rod and line during 2010 and 2011 (regulation 10). After that close seasons will be imposed by byelaws made under the Water Resources Act 1991. Part 3 also allows the Environment Agency to revoke a licence to fish for eels other than by rod and line if it is necessary to do so in order to reduce fishing effort to meet levels specified in Council Regulation (EC) No 1100/2007 (regulation 11).

Part 4 makes provision for the passage of eels through dams and other obstructions (regulations 12 to 16). It also requires the placement of screens that will protect eels over some intakes and outlets (regulations 17 to 19).

Part 5 makes provision for notices and appeals. Part 6 gives enforcement powers to inspectors.

An impact assessment has been prepared and placed in the libraries of both Houses of Parliament. It is available on the Defra website at www.defra.gov.uk. A copy can also be obtained from the Welsh Assembly Government, Cathays Park, Cardiff, CF10 3NQ.