

Comparing powers under 67 Act with Byelaw making powers under Marine & Coastal Access Act.

	Key Differences	Marine & Coastal Access Act 2009 (2009 Act)	Sea Fisheries (Shell Fish) Act 1967 (1967 Act)
Powers	<p><u>Power to grant several right</u></p> <p>The 1967 Act provides for power to grant exclusive right of shellfishery. There is no equivalent power to grant proprietorial rights under the 2009 Act.</p> <p><u>Power to regulate</u></p> <p>There are some key differences between the two Acts in relation to the powers to regulate fisheries:-</p> <p>a) Byelaw regulations have to be consistent with the IFCA's duties of sustainability and protecting MCZs under s.153. These are mandatory duties and the byelaw making power is the principal mechanism for their performance.</p> <p>b) s.156 of the 2009 Act sets out six non-exhaustive Heads of provision, with non-exhaustive sub-provisions under each by way of example. Taken together with the duties under s.153 there is a strong argument that a <u>broad</u> interpretation of what</p>	<p><u>Duties</u></p> <ul style="list-style-type: none"> • Powers should be read in the context of the IFCA duties set out under s.153 which include duty to:- <ul style="list-style-type: none"> ○ ensure that the exploitation of fisheries is carried out in a sustainable way; ○ balance the social and economic benefits with need to protect marine environment; ○ balance the different needs of those engaged with the exploitation of fisheries in the district. <p><u>Powers</u></p> <ul style="list-style-type: none"> • Power to prohibit/restrict the exploitation of sea fisheries resources including in <ul style="list-style-type: none"> ○ specified areas or during 	<ul style="list-style-type: none"> • Power to make an order to provide for the <u>establishment and improvement, and for the maintenance and regulation</u> of a fishery for shellfish within 6 miles (including estuaries and tidal rivers) - s.1. <p><u>Several Orders</u></p> <ul style="list-style-type: none"> • Effect of several fishery – exclusive right of shellfishery - s2(1) <ul style="list-style-type: none"> (i) to make/maintain beds for shellfish; (ii) at any season collect, remove and deposit shell fish; (iii) all other things grantees think proper for obtaining, storing and disposing of their produce. • Any shellfish not specified in the order and all fin fish may be fished by 3rd parties although inability to use most fishing implements reduces scope for fishing opportunities –see s.7(4)

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	<p>powers are permitted in a byelaw is necessary. That being the case it should be possible to implement those regulations and restrictions which would otherwise be permitted under an SRO (1967 Act) in a byelaw (2009 Act). This is subject to the byelaw being consistent with the IFCA's duties i.e.: - it needs to be clearly justified, in the pursuance of those duties, and the byelaw must specify, as far as possible, what it is controlling.</p> <p><u>Power to sub-delegate regulations</u></p> <p>c) For SROs there is a power under s.15(3 & 4) Sea Fisheries Act 1968 which provides for the sub-delegation of powers (with the consent of the minister) in relation to: dredging; fishing for and taking of shellfish; varying tolls and royalties.</p> <p>This power is not replicated in the 2009 Act for byelaws, however, advice from Counsel and from Defra legal is that although there is a risk of challenge to byelaws when sub-delegating powers are used (the greater the delegation, the greater the risk) that risk should be limited provided that it is made clear on the face of the byelaw what conditions are to be dealt with by way of permitting/schedules/ or notices; specific</p>	<p>specified periods</p> <ul style="list-style-type: none"> o limiting the amount of sea fishery resources a person may take in a specified period - s156(3) • Power to require use of permits including provision for (i) charging fees for permit; (ii) enabling conditions to be attached to permits; and (iii) limit to be put on the number of permits – s.156(4) • Power to prohibit certain types of vessels, methods and types of gear – s.156(5) • Protecting shellfish fisheries – including (i) requiring certain shellfish to be re-deposited in specified localities (ii) provision for protection of culch and other material for the reception of spat or young shellfish (iii) prohibitions for sale of oysters between certain dates – s.156(6) • Power to monitor fishing – including requiring (i) vessels to be fitted with 	<p><u>Regulating Orders</u></p> <ul style="list-style-type: none"> • Regulating orders regulate the fishing of shellfish. s. 3 provides powers to:- <ul style="list-style-type: none"> (i) enforce restrictions within the limits of the fishery; (ii) levy tolls for the purposes relating to the regulation of the fishery; (iii) Grantees may retain Tolls for the purposes of recouping any costs incurred. (vi) deposit or provide propagating shellfish (v) licence certain individuals to fish/dredge take – s.4(2); although Minister must be notified of intention to issue licences - s.4(5) • SRO requires consent of person affected if it abridges or takes away any right enjoyed by a person under a local or special Act of Parliament, any Royal Charter, letters patent, prescription, or immemorial usage – s1(5). • There is a power under s.15(3 & 4) Sea Fisheries Act 1968 which provides for the
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	<p>limits are included on the face of the byelaw; the reason for sub-delegation is clearly justified and within the duties of IFCA, and there are associated with the byelaw formal operational procedures which set out the processes by which the IFCA will review/amend the byelaw.</p> <p><u>Powers of Investigation/monitoring</u></p> <p>The 2009 Act includes additional powers of monitoring, including requiring vessels to be fitted with specific equipment, as well as powers of obtaining information from those involved in exploiting fisheries. These powers are not available in the 1967 Act in relation to SROs.</p> <p><u>Third Party Rights</u></p> <p>A byelaw's under the 2009 Act can override other rights if site is a SSI/Ramsar site, MCZ, or European Marine Site and, in those circumstances, can be made without the consent of those it affects. Otherwise consent is required. By contrast an SRO under the 1967 Act requires the consent of third parties whose rights are infringed.</p>	<p>specific equipment; (ii)vessels to carry specified persons; (iii) specific items used for the exploitation of fisheries to be marked – s.156(7)</p> <ul style="list-style-type: none"> • Power to require information from those involved in exploitation of sea fisheries – s.156(8) • Powers include power to make different provisions for different cases or circumstances – e.g. different parts of the IFCA district, different times of the year, or different sea fishery resources – s.158(1). • Byelaw requires consent of person affected if it interferes/restricts right of several fishery or right under a local or special Act of Parliament (s.158(3)-(5)) unless it relates to a site of SSI/Ramsar site, MCZ, or European Marine Site in which case no consent is required – s.158(6). • Provision for Emergency Byelaw to be made without confirmation from the SoS in circumstances where the IFCA considers there to be an urgent need, and the need to make the 	<p>sub-delegation (with the consent of the minister) to the grantee of those powers which impose restrictions or make regulations under s.1 of the 1967 Act in relation to: (i) dredging; (ii) fishing for and taking of shellfish; vary tolls and royalties.</p>
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	<p><u>Emergency Regulations</u></p> <p>Under the 2009 Act IFCA's have the power to make an emergency byelaw. This can be made without confirmation from the SoS in circumstances where the IFCA considers there to be an urgent need, and the need to make the byelaw could not have been foreseen – s.157(1). Such a byelaw is time limited to 12months unless extended by the SoS. No such powers are available under the 1967 Act.</p>	<p>byelaw could not have been foreseen – s.157(1). Such a byelaw is time limited to 12months unless extended by the SoS – s.157(3)</p>	
Offences	<p>Offences and penalties are essentially mirrored under both Acts. One key difference is that the MCAA does not contain the presumption of an offence if the accused is caught within the vicinity of the regulated fishery with equipment.</p> <p>A breach of a byelaw permit condition alone is not an offence under s.163l. A breach of a byelaw would be required for there to be an offence.</p>	<ul style="list-style-type: none"> • A person who contravenes a byelaw is guilty of an offence and liable to a fine up to £50,000 – s.163. • Offence extends to master, owner, charterer of vessel used in contravention of the bylaw – s.163(2). • Court may order forfeiture of any fishing gear or fishing resources – s.164(2). • Note - a breach of a byelaw permit condition alone is not an offence under s.163 	<ul style="list-style-type: none"> • Any person who fishes in contravention of restriction/regulation shall be guilty of an offence and a fine not exceeding £50,000 - includes power to forfeit shellfish taken, or if they have been sold a sum equal to their value – s.3(3). • Presumption that accused was in contravention of restrictions s.3 (3A) if it is proved that the accused was (i) within the limits or immediate vicinity of the regulated fishery; (ii) at a time the regulation applied; with equipment for the purposes of fishing/dredging/taking what is prohibited. • Offence and power to fine extends to the

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			<p>master/owner/charter of a fishing boat –s.3 (5).</p> <ul style="list-style-type: none"> • Protection of fisheries – if person without several right is caught fishing/dredging/depositing ballast/rubbish, he/she will be guilty of an offence and liable to summary conviction with fine up to £50,000 - s.7(4) – unless area is not properly marked s.7(5).
Enforcement powers	<p>Since the implementation of the 2009 Act the enforcement powers available to IFC officers in respect of byelaws and SROs are the same.</p>	<ul style="list-style-type: none"> • IFCA may appoint a IFC officer for the purpose of enforcing byelaws – s.166(1) who has the powers to:- <ul style="list-style-type: none"> ○ board and inspect vessels - s.246 ○ enter and inspect premises – s.247 ○ enter and inspect vehicles – s.248 ○ enter and inspect dwellings provided officer has a warrant – s.249 • When exercising powers under s.246,247,248, an officer has powers of search and seizure – s.252 • Power to record evidence of offence – s.255 • Power to require address and production of licence - s.256 & s.257 • Power to require attendance and direct vessel to port – s.258 and s.259 	<ul style="list-style-type: none"> • For enforcement SROs have the benefit s.166(3) MCAA. This allows Inshore Fisheries Conservation Officers (IFC) have to enforce the rules of an SRO in the same manner in which IFCs enforce byelaws.

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		<ul style="list-style-type: none"> • Power to use reasonable force - s.261 • Power to inspect & seize objects at sea –s.264 • Power to seize fish for the purpose of forfeiture – s.268 • Power to seize fishing gear for the purpose of forfeiture – s.269 • Power to require production of certain equipment – s.s284 	
Limits of Order/Byelaw	<p>There are slight variations in the limits of SROs and byelaws.</p> <ul style="list-style-type: none"> • The geographical extent of a byelaw is confined to the limits of the IFCA jurisdiction. An SRO is can be made anywhere within 6nm of the seashore. • An SRO cannot exist longer than 60 years whereas a byelaw is not specifically time-limited. However, Defra byelaw guidance stipulates that IFCA's should continually monitor the effectiveness of byelaws and where they are no longer effective, they should be repealed/modified (para 6.5) 	<ul style="list-style-type: none"> • No specified time limit although IFCA Byelaw Guidance stipulates that IFCA's should continually monitor the effectiveness of byelaws and where they are no longer effective, they should be repealed/modified (para 6.5). • Geographical extent is confined to the area <u>within</u> the IFCA district which the byelaw is made – s.155(2) 	<ul style="list-style-type: none"> • Time limit of an order is 60 Years - s.1(3). • Geographical extent of the order is the area to which the order applies, so long as it is within 6 nautical miles from the seashore – s.1(1)
Cessation/Variation		<ul style="list-style-type: none"> • If SoS is satisfied that any provision made by the byelaw is unnecessary; inadequate; or disproportionate, the SoS may revoke or amend the byelaw – 	<ul style="list-style-type: none"> • Any order may be varied or revoked by subsequent order s.1(6) • Minister may make or vary the order by

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		s.159	<p>virtue of s.1(10) in circumstances where permission has been granted to carry out any development for which development has been granted in circumstances where it would be impossible to exercise any right of several fishery.</p> <ul style="list-style-type: none"> • If minister is not satisfied that order is being properly implemented he may make a certificate determining SRO - s.5(1).
Licence Register	No requirements for IFCA's to have a licence/permit register.	n/a	<ul style="list-style-type: none"> • Licence register must be maintained – s4ZA
Process of Implementation	<p>The principle difference between an SRO and a byelaw is that the IFCA takes responsibility for consulting on and drafting the byelaw. Once the consultation for a byelaw is complete the IFCA is required to submit the final draft to the MMO for checks and then to the SoS for approval.</p> <p>Another difference is no provision for the SoS to recoup any expenses for approving the byelaw.</p>	<p>IFCA's must have regard to the following procedure when making a byelaw (as per the Guidance)</p> <ul style="list-style-type: none"> => Impact Assessment. => Notify IFCA Members, SoS, and stakeholders of intention to make byelaw => consultation with stakeholders. => deal with objections and provide explanation if they cannot be resolved. => once consultation period is complete final byelaw should be submitted to the MMO for checks, amendment or local inquiry. => MMO submit to SoS for final 	<ul style="list-style-type: none"> • Application => draft order => publication => objections/refs within 1 month • where there are relevant objections appoint an inspector to hold an inquiry => Inspector may take evidence under oath • where there are no objections after the expiry of 1 month then as soon as reasonably practicable the minister will either refuse or make the Order • All expenses shall be paid by the applicant and shall be paid to the minister in such sums he thinks fit.

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