

SALMON CONSERVATION (SCOTLAND) ACT 2001

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Administration in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So, where a section or schedule does not seem to require any explanation or comment, none is given.

THE ACT

3. The Act provides a package of measures giving Scottish Ministers powers to make regulations for the conservation of salmon and sea trout stocks. It does this primarily by extending the currently available powers to regulate fishing.

Section 1: Conservation of salmon and sea trout

4. This section of the Bill inserts five new sections (10A, 10B, 10C 10D and 10E) into the Salmon Act 1986 (“the 1986 Act”).

Section 10A: Regulations to assist conservation of salmon

5. Subsection (1) gives those persons specified in section 6(4) of the 1986 Act the power to apply to Scottish Ministers for regulations to be made to conserve salmon and/or sea trout. Eligible applicants include the district salmon fishery board for a salmon fishery district, or, where there is no such board, two proprietors of salmon fisheries within that district.
6. Subsection (2) describes the form that an application shall take. The application should be in writing and should include a general description of the proposals, why they are deemed to be necessary, and statement of the general effect of the proposals.
7. Subsection (3) empowers Scottish Ministers to make such regulations either in response to an application under subsection (1) or of their own accord if they consider that conservation measures are necessary or expedient.

8. Subsection (4) makes clear that just because the regulations deal also with management, does not mean that they are not to do with matters of conservation.

9. Subsection (5) requires Scottish Ministers, when considering whether or not to make regulations, to take account of representations from persons with an interest in fishing for or taking salmon, or in the environment.

10. Subsection (6) makes clear that the new powers relate only to salmon fisheries and cannot be used to make provision which could be made under existing powers, except in the case of baits and lures, which are separately covered for the purposes of the provisions referred to in subsection (7)(b).

11. Subsection 7(a) confirms that the power conferred by the section extends to the making of provision in regulations to require a proprietor to provide information to a district salmon fishery board. This is intended to improve the information base of District Salmon Fishery Boards.

12. Together with subsection (6), subsection (7)(b) gives Ministers powers to make regulations in relation to baits and lures for the purposes of the provisions referred to in subsection (7)(b) without having to receive an application under section 8 of the 1986 Act.

Section 10B: Powers of enforcement, entry, search and arrest

13. This section extends current enforcement powers (including entry, search and arrest) under the Salmon Fisheries (Scotland) Act 1868 and the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (“the 1951 Act”) to cover any measures introduced under the provisions of section 10A, and provides scope for additional enforcement powers, which may be deemed necessary.

Section 10C: Offences penalties, forfeiture etc

14. This section creates offences and provides penalties in relation to a contravention of or failure to comply with any provision of regulations made under section 10A. It also extends certain provisions of the 1951 Act (sections 7(3) (evidence), 19(1) (forfeiture) and 20 (disposal of seized fish)) to cover such offences.

Section 10D: Regulations

15. Subsection (1) provides that any regulations made will be made by statutory instrument subject to annulment in pursuance of a resolution of the Parliament.

16. Subsection (2) makes clear that such regulations may make provision for a whole district or river or any part thereof, that they may apply in relation to any time or season and that they may apply to any class of fish e.g. salmon or sea trout.

17. Subsection (3) applies paragraphs 3-8 of Schedule 1 of the 1986 Act (i.e. provisions relating to consultation, publication and making of the Order) (with appropriate modifications) where regulations are to be made in response to an application to Scottish Ministers under section 10A.

18. Subsection (4) applies paragraphs 3-8 of Schedule 1 of that Act (with appropriate modifications) where regulations are to be made by Scottish Ministers of their own accord under section 10A.

Section 10E: Application to River Esk

19. This section applies the new provisions above to that part of the River Esk that lies in Scotland with a minor deeming provision.

Section 2: Amendment of Section 19 of the 1986 Act

20. This section amends section 19 of the 1986 Act, which otherwise excludes the application of Part I of the 1986 Act to the River Esk, to take account of section 10E.

Section 3: Short title and commencement

21. This section of Act gives the short title to the Act and made provisions for it being brought into force by Scottish Statutory Instrument.

PARLIAMENTARY HISTORY OF SALMON CONSERVATION (SCOTLAND) ACT 2001

The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which proceedings at that Stage took place, the references to the Official Report of those proceedings and the dates on which Committee Reports were published and the references to those Reports.

Proceedings and Reports

Reference

Introduction

28 September 2000

SP Bill 20 (Session 1)

Stage 1

(a) Rural Affairs Committee

25 th Meeting, 2000	19 September 2000, cols 1137-1145
26 th Meeting, 2000	26 September 2000, cols 1166-1172
27 th Meeting, 2000	3 October 2000, cols 1210-1211
28 th Meeting, 2000	31 October 2000, cols 1249-1254
29 th Meeting, 2000	7 November 2000, cols 1263-1309
9 th Report (20 November 2000): Stage 1 Report on the Salmon Conservation (Scotland) Bill	SP Paper 218

(b) Subordinate Legislation Committee

30 th Meeting, 2000	31 October 2000, cols 325-326
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(c) Consideration by the Parliament

23 November 2000	cols. 334 - 372
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Stage 2

Rural Affairs Committee

36 th Meeting, 2000	12 December 2000, cols 1529-1554
37 th Meeting, 2000	19 December 2000, cols 1570-1601

Stage 3

(a) Subordinate Legislation Committee

1 st Meeting, 2001	9 January 2001, cols 394-397
2 nd Report (10 January 2001): Report on Salmon Conservation (Scotland) Bill As Amended At Stage 2 Delegated Powers Scrutiny	SP Paper 250

(b) Consideration by the Parliament

11 January 2001	cols. 81 - 144
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Royal Assent – 14 February 2001

The Salmon Conservation (Scotland) Act 2001 (Commencement) Order 2001 (S.S.I. 2001/116) made on 14 March 2001 brought the Salmon Conservation (Scotland) Act into force on 15 April 2001.

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