



# Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003

2003 asp 15

## PART 1

### METHODS OF FISHING AND OFFENCES RELATED TO FISHING

#### *Methods of fishing*

#### **1 Methods of fishing: salmon**

- (1) Any person who fishes for or takes salmon in any inland waters, except—
  - (a) by rod and line;
  - (b) by net and coble; or
  - (c) subject to subsections (4) and (5) below—
    - (i) by cruive; or
    - (ii) in the Solway, by a certificated fixed engine or a haaf net,shall be guilty of an offence.
- (2) Subject to section 25 of this Act, any person who fishes for or takes salmon in any waters in a salmon fishery district other than inland waters except by—
  - (a) rod and line;
  - (b) net and coble; or
  - (c) bag net, fly net or other stake net,shall be guilty of an offence.
- (3) Without prejudice to section 294 (attempts to commit crime) of, and paragraph 10 of Schedule 3 to, the Criminal Procedure (Scotland) Act 1995 (c. 46), any person who attempts to commit or who does any act preparatory to the commission of an offence mentioned in this section shall be guilty of an offence, and liable to the same punishment as if that person had committed the offence mentioned.
- (4) In relation to cruives—
  - (a) a right of fishing by cruive may be exercised if, and only if, it was in existence before 10th May 1951; and

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- (b) if a question arises in any proceedings as to whether any person is entitled to use a cruive it shall be for the person using or seeking to use the cruive to show that that person is, or has the permission of another person who is, so entitled.
- (5) For the purposes of subsection (1)(c)(ii) above—
- (a) “certificated fixed engine” means a fixed engine certificated as privileged under section 5 of the [Solway Salmon Fisheries Commissioners Act 1877 \(c.ccx1\)](#), and if a question arises in any proceedings as to whether any fixed engine is so certificated, it shall be for the person using or seeking to use the fixed engine to show that it is so certificated;
  - (b) in relation to haaf nets—
    - (i) a right of fishing by haaf net may be exercised at any location if, and only if, it was in existence before 10th May 1951; and
    - (ii) if a question arises in any proceedings as to whether a person is entitled to use a haaf net, it shall be for the person using or seeking to use such a net to show that that person is, or has the permission of another person who is, so entitled; and
  - (c) “the Solway” includes the rivers, streams or other watercourses running into the Solway.
- (6) A person found guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## **2 Methods of fishing: freshwater fish**

- (1) Subject to subsections (3) and (4) below, any person who fishes for or takes freshwater fish in any inland waters except by rod and line shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (2) Without prejudice to section 294 (attempts to commit crime) of, and paragraph 10 of Schedule 3 to, the Criminal Procedure (Scotland) Act [1995 \(c. 46\)](#), any person who attempts to commit or who does any act preparatory to the commission of the offence mentioned in subsection (1) above shall be guilty of an offence, and liable to the same punishment as if that person had committed the offence mentioned.
- (3) In any pond or loch where all the owners are agreed, a right of fishing may be exercised by net.
- (4) In any inland waters an owner or occupier may fish for or take freshwater fish, other than trout, by net or trap.

## **3 Use of gaff, tailer or landing net**

Nothing in section 1 or 2 of this Act shall be construed as prohibiting the use of a gaff, tailer or landing net as auxiliary to the taking of fish by rod and line.

## **4 Meaning of “rod and line”**

- (1) In this Act “rod and line” means single rod and line (used otherwise than as a set line or by way of pointing, or by striking or dragging for fish) with such bait or lure as is not prohibited by this section or, in relation to fishing for salmon, under section 33 or 38(5)(b) of this Act.

- (2) It is prohibited to use fish roe, fire or light as bait or lure.

*Offences related to fishing for salmon and freshwater fish*

**5 Prohibition against using explosive and other noxious substances for the destruction or taking of fish**

- (1) Any person who—
- (a) uses any explosive substance with intent to take or destroy fish in any waters (including the sea up to 22 kilometres from the baselines from which the breadth of the territorial sea is measured);
  - (b) puts any poison or other noxious substance in or near any such waters with intent to take or destroy fish; or
  - (c) uses any electrical device with intent to stun or destroy salmon or freshwater fish in any such waters,
- shall be guilty of an offence.
- (2) Without prejudice to section 294 (attempts to commit crime) of, and paragraph 10 of Schedule 3 to, the Criminal Procedure (Scotland) Act 1995 (c. 46), any person who attempts to commit or who does any act preparatory to the commission of an offence mentioned in subsection (1) above shall be guilty of an offence, and liable to the same punishment as if that person had committed the offence mentioned.
- (3) A person found guilty of an offence under this section shall be liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 3 months or to both such fine and such imprisonment; and
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both a fine and such imprisonment.

**6 Fishing for salmon without right or permission**

- (1) Any person who without legal right, or without written permission from a person having such right, fishes for or takes salmon in any waters, including any part of the sea within 1.5 kilometres of mean low water springs, shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) Without prejudice to section 294 (attempts to commit crime) of, and paragraph 10 of Schedule 3 to, the Criminal Procedure (Scotland) Act 1995 (c. 46), any person who attempts to commit or who does any act preparatory to the commission of the offence mentioned in subsection (1) above shall be guilty of an offence, and liable to the same punishment as if that person had committed the offence mentioned.

**7 Illegal fishing by two or more persons acting together**

If two or more persons acting together do any act which would constitute an offence under section 1, 2 or 6 of this Act, every such person shall be guilty of an offence under this section, and liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 3 months or to both such fine and such imprisonment; and

- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both a fine and such imprisonment.

## **8 Taking of dead salmon or trout**

- (1) Without prejudice to section 3 of the Diseases of Fish Act 1937 (c. 33) (powers and duties of fishery boards), any person other than—
  - (a) a constable or a water bailiff in the exercise of their respective duties;
  - (b) a person authorised in that regard by the Scottish Ministers or a district salmon fishery board; or
  - (c) a person with a right to fish therein or the agent of any such person,who takes or removes dead salmon or trout from any waters, including any part of the sea within 1.5 kilometres of low water mark, shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (2) Without prejudice to section 294 (attempts to commit crime) of, and paragraph 10 of Schedule 3 to, the Criminal Procedure (Scotland) Act 1995 (c. 46), any person who attempts to commit or who does any act preparatory to the commission of the offence mentioned in subsection (1) above shall be guilty of an offence, and liable to the same punishment as if that person had committed the offence mentioned.

## **9 Illegal possession of salmon or trout**

- (1) Any person who is found in possession of any salmon or trout, or any instrument, explosive, poison or other noxious substance which could be used in the taking of salmon or trout, in circumstances which afford reasonable ground for suspecting that that person has obtained possession of such salmon or trout, or such instrument, explosive, poison or substance as the result or for the purpose of committing an offence under any of the provisions of sections 1, 2, 5, 6 or 7 of this Act, may be charged with unlawful possession as aforesaid of such salmon or trout, or of such instrument, explosive, poison or substance.
- (2) Where the court is satisfied that a person charged under subsection (1) above obtained possession of salmon or trout, or of any instrument, explosive, poison or other noxious substance as the result or for the purpose of committing an offence under any of the provisions of sections 1, 2, 5, 6 or 7 of this Act, that person may be convicted of unlawful possession as aforesaid and dealt with in like manner as if that person had been convicted of the same offence.
- (3) A person who commits an offence under this section may be convicted on the evidence of one witness.

## **10 Offences in relation to passage of salmon**

- (1) Any person who does any act for the purpose of preventing salmon from passing through any fish pass, or taking any salmon in its passage through the same, shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (2) A person who commits an offence under this section may be convicted on the evidence of one witness.

## **11 Fishing in waters where fishing rights owned by one person**

- (1) Any person who without legal right, or without permission from a person having such right, fishes in a proper stank or loch shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 1 on the standard scale.
- (2) For the purposes of this section—
  - “proper stank or loch” means a stank or loch the fishing rights in which are owned by one person; and
  - “stank” means a reservoir or pond with neither inlet nor outlet sufficient to allow access or egress by fish.

## **12 Contravention of protection order**

- (1) Any person who fishes for or takes freshwater fish in contravention of a prohibition contained in a protection order made under section 48 of this Act shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) Without prejudice to section 294 (attempts to commit crime) of, and paragraph 10 of Schedule 3 to, the Criminal Procedure (Scotland) Act 1995 (c. 46), any person who attempts to commit or who does any act preparatory to the commission of the offence mentioned in subsection (1) above shall be guilty of an offence and liable to the same punishment as if that person had committed the offence mentioned.

### *Close times for salmon*

## **13 Weekly close time for salmon**

- (1) The weekly close time for salmon shall extend from the hour of six in the evening on Friday to the hour of six on the following Monday morning.
- (2) No person shall fish for or take salmon during Sunday.
- (3) No person shall fish for or take salmon (except during Friday, Saturday or Monday by rod and line) during the weekly close time.
- (4) Any person who contravenes this section shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (5) A person who commits an offence under this section may be convicted on the evidence of one witness.
- (6) This section is subject to section 31(5) of this Act.

## **14 Fishing for salmon during annual close time**

- (1) Subject to subsection (2) below, any person who fishes for or takes salmon during the annual close time within the meaning of section 37 of this Act shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

- (2) It shall not be an offence to fish for or take salmon by means of rod and line at any period within the annual close time when such fishing is permitted by the regulations or, as the case may be, bylaws in force in the district in which the fishing occurs.
- (3) A person who commits an offence under this section may be convicted on the evidence of one witness.

## **15 Removal of boats and nets during annual close time**

- (1) The proprietor or occupier of any salmon fishery shall within thirty-six hours after the commencement of the annual close time—
  - (a) remove and carry from such fishery, and from the landing places and grounds adjacent thereto, all boats, oars, nets, engines and other tackle used or employed by such occupier in taking salmon; and
  - (b) effectually secure the same so as to prevent their being used in fishing until the end of the close time,with the exception of such boats and oars as may be used in angling.
- (2) The proprietor or occupier of any cruive shall within thirty-six hours after the commencement of the annual close time—
  - (a) remove and carry away all the hecks, rails and inscales;
  - (b) effectually secure the same so as to prevent their being used in fishing; and
  - (c) remove all planks and temporary fixtures and other obstructions to the free passage of fish through the cruive.
- (3) Any proprietor or occupier who fails to comply with the duty imposed by subsection (1) or, as the case may be, (2) above shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) A person who commits an offence under this section may be convicted on the evidence of one witness.
- (5) Nothing in this section applies to—
  - (a) any ferry-boat or prevents the continued use of any boat by the owner, or the family of the owner, of lands, if the boat has the owner's name painted on it, and is secured, when not in use for lawful purposes, by lock and key;
  - (b) the pins fixed in the ground to assist in the support of the stakes or poles of fly nets or other stake nets;
  - (c) the fastenings fixed in rocks for the support of bag nets; or
  - (d) the pins and poles of certificated fixed engines.

## **16 Buying and selling salmon in close time**

- (1) Any person who buys, sells, exposes for sale or is in possession of, any salmon taken within the limits of this Act during the period when the annual close time is in force in every salmon fishery district and in the River Tweed, shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) It shall be a defence to a prosecution brought under this section for the accused to prove that the salmon was caught lawfully.

- (3) The burden of proving that any salmon was caught beyond the limits of this Act shall lie on the person charged with selling, exposing for sale, or being in possession of, the salmon.
- (4) A person who commits an offence under this section may be convicted on the evidence of one witness.

#### *Close time for trout*

### **17 Annual close time for trout**

- (1) The annual close time for trout shall extend from 7th October to 14th March, both inclusive.
- (2) Subject to subsections (3) and (4) below, any person who, during the annual close time for trout—
  - (a) fishes for or takes trout in any inland waters; or
  - (b) is in possession of trout,shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) It shall not be an offence under this section for the owner or occupier of any water where trout are kept in captivity or artificially reared or fed, or any person employed by such a person, to take trout from such water during the annual close time—
  - (a) for scientific or breeding purposes;
  - (b) for the purpose of removing them or having them removed, alive, to other waters.
- (4) It shall not be an offence under this section for a person to whom trout are consigned, whether by sale or otherwise, for the purpose mentioned in subsection (3)(b) above, to be in possession of such trout.

#### *Offences related to sale, purchase and possession of salmon and trout*

### **18 Unclean salmon**

- (1) Any person who—
  - (a) wilfully takes or fishes for; or
  - (b) buys, sells, exposes for sale or is in possession of,any unclean or unseasonable salmon shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) Subsection (1)(a) above does not apply to any person who takes such fish accidentally and forthwith returns it to the water with the least possible injury.
- (3) A person who commits an offence under this section may be convicted on the evidence of one witness.

## **19 Salmon roe**

- (1) Any person who buys, sells, exposes for sale or is in possession of any salmon roe shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) Subsection (1) above shall not apply to any person who gives a reason, satisfactory to the court before which that person is charged, for being in possession of salmon roe.
- (3) It shall be a defence for a person charged with an offence under subsection (1) above to prove—
  - (a) that the roe had been produced in the course of fish farming within the meaning given by section 33(6) of the Fisheries Act 1981 (c. 29); or
  - (b) that that person believed on reasonable grounds that it had been so produced.
- (4) A person who commits an offence under this section may be convicted on the evidence of one witness.
- (5) Subsection (3) above is without prejudice to the provisions of subsection (2) above relating to the circumstances in which subsection (1) above does not apply.

## **20 Possessing salmon which have been illegally taken, killed or landed**

- (1) Any person who—
  - (a) is in possession of salmon and believes; or
  - (b) is in possession of salmon in circumstances in which it would be reasonable for that person to suspect,that a relevant offence has at any time been committed in relation to the salmon shall be guilty of an offence.
- (2) A person found guilty of an offence under this section shall be liable—
  - (a) on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 3 months or to both such fine and such imprisonment; and
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both a fine and such imprisonment.
- (3) It shall be a defence in proceedings for an offence under this section for the accused to show that no relevant offence had in fact been committed in relation to the salmon.
- (4) A person who commits an offence under this section may be convicted on the evidence of one witness.
- (5) For the purposes of this section an offence is a relevant offence in relation to a salmon if—
  - (a) it is committed by taking, killing or landing that salmon, either in Scotland or in England and Wales; or
  - (b) that salmon is taken, killed or landed, either in Scotland or in England and Wales in the course of the commission of the offence,

and, for the purposes of this subsection, “offence”, in relation to the taking, killing or landing of salmon either in Scotland or in England and Wales means an offence under the law applicable to the place where the salmon is taken, killed or landed.

- (6) A person shall not be guilty of an offence under this section in respect of conduct which constitutes a relevant offence in relation to any salmon or in respect of anything done in good faith for purposes connected with the prevention or detection of crime or the investigation or treatment of disease.

## **21 Packages of salmon or trout to be marked**

- (1) Any person who consigns or sends by any common or other carrier any salmon or trout in a package which is not marked conspicuously on the outside with—
- (a) the word “salmon” or “sea trout” or, as the case may be, “trout”; and
  - (b) the name and address of the sender,
- shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) An authorised person may open any package consigned or sent or brought to any place to be consigned or sent, and suspected to contain salmon or trout.
- (3) Where a package opened under subsection (2) above is found to contain salmon or trout and—
- (a) the package is not marked as described in subsection (1) above; or
  - (b) there is reasonable cause to suspect that salmon or trout contained in any package so marked is being dealt with contrary to law,
- an authorised person may detain the package and its contents pending proceedings for an offence against any provision of this Act.
- (4) If, before the conclusion of such proceedings as are mentioned in subsection (3) above, any salmon or trout detained under that subsection becomes unfit for human consumption, any authorised person may destroy it, or cause it to be destroyed.
- (5) Any person who—
- (a) refuses to allow an authorised person to exercise a power conferred by this section; or
  - (b) obstructs any authorised person in the exercise of a power so conferred,
- shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) For the purposes of this section an “authorised person” means—
- (a) any constable;
  - (b) any water bailiff;
  - (c) any person appointed for the purposes of this section by the Scottish Ministers.

## **22 Size limit for selling trout**

- (1) Subject to subsection (2) below, any person who purchases, sells, exposes for sale, consigns for sale, exports or consigns for export—
- (a) trout under 20 centimetres in length; or
  - (b) any trout at any time between 1st September and 31st March both inclusive,
- shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- (2) Nothing in this section shall apply to live trout sold or disposed of for the purpose of stocking any river, loch or water, or of artificial propagation.

*Protection of young salmon*

**23 Young salmon and spawning beds**

- (1) Any person who—
- (a) knowingly takes, injures or destroys;
  - (b) buys, sells, exposes for sale or is in possession of; or
  - (c) places any device or engine for the purpose of obstructing the passage of, any smolt, parr, salmon fry or alevin shall be guilty of an offence.
- (2) Any person who knowingly—
- (a) injures or disturbs any salmon spawn; or
  - (b) disturbs any spawning bed or any bank or shallow in which the spawn of salmon may be,
- shall be guilty of an offence.
- (3) Any person who during the annual close time obstructs or impedes salmon in their passage to any such bed, bank or shallow shall be guilty of an offence.
- (4) Subsections (1) to (3) above shall not apply to acts done in the course of cleaning or repairing any dam or mill-lade, or in the exercise of rights of property in the bed of any river or stream.
- (5) Notwithstanding subsections (1) to (3) above and subject to subsection (6) below, a district salmon fishery board may, with the consent of all the proprietors of salmon fisheries in any river or estuary, adopt such means as they think fit for preventing the ingress of salmon into narrow streams in which they or the spawning beds are from the nature of the channel liable to be destroyed.
- (6) Nothing done under subsection (5) above may interfere with any water rights used or enjoyed for the purposes of manufacture, agriculture or drainage.
- (7) A person who commits an offence under this section may be convicted on the evidence of one witness, and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**24 Unauthorised introduction of salmon or salmon eggs into certain waters**

- (1) A person who intentionally introduces any salmon or salmon eggs into inland waters in a salmon fishery district for which there is a district salmon fishery board shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (2) A person shall not be guilty of an offence under this section in respect of the introduction of salmon or salmon eggs into such waters if—
- (a) the district salmon fishery board for the salmon fishery district in which the waters are situated have previously consented in writing; or
  - (b) the waters constitute or are included in a fish farm.

### *Offences in relation to the Solway*

#### **25 Fixed engines in the Solway**

- (1) Any person who, for the purpose of taking, or obstructing the free passage of, salmon, places or uses an uncertificated fixed engine in the Solway shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (2) In subsection (1) above—
  - “fixed engine” includes any net or other implement for taking fish which is fixed to the soil or made stationary in any other way; and
  - “uncertificated” means not having been certificated as privileged under section 5 of the [Solway Salmon Fisheries Commissioners \(Scotland\) Act 1877 \(c.ccxI\)](#).

#### **26 Fishing without legal right in the Solway**

- (1) Any person who, without legal right, or without permission of a person having such right, takes or fishes for any fish other than salmon in any of the rivers, streams or other watercourses running into the Solway shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 1 on the standard scale.
- (2) This section shall not apply to the River Annan and, in this subsection, “the River Annan” includes—
  - (a) the rivers, streams or other watercourses running into the River Annan; and
  - (b) the coast of the Solway between the west bank of the River Sark and the east bank of the Lochar Water.

### *Exemptions*

#### **27 Exemption from certain offences in respect of acts done for scientific and other purposes: salmon**

- (1) A person shall not, in respect of any act or omission relating to salmon or salmon roe or eggs, be guilty of a contravention of an enactment prohibiting or regulating that act or omission if—
  - (a) the act or omission is for—
    - (i) some scientific purpose;
    - (ii) the purpose of protecting, improving or developing stocks of fish; or
    - (iii) the purpose of conserving any creature or other living thing; and
  - (b) that person has obtained the previous permission in writing—
    - (i) if the act or omission is one to which this sub-paragraph applies, of the district salmon fishery board for the salmon fishery district in which it takes place or of the Scottish Ministers; and
    - (ii) in any other case, of the Scottish Ministers,for the act or omission.
- (2) Sub-paragraph (i) of subsection (1)(b) above applies if the act or omission referred to in that sub-paragraph takes place in a salmon fishery district for which there is a district salmon fishery board; and is a contravention of section 1, 2, 5(1)(c), 18, 19 or 23 of this Act.

- (3) A permission under subsection (1) above shall specify the act or omission permitted and the enactment to which the permission relates.

**28 Exemption from certain offences in respect of acts done for scientific and other purposes: fish other than salmon**

- (1) A person shall not be guilty of any contravention of a provision specified in subsection (2) below in respect of any act in relation to fish other than salmon, if that person does the act for—
- (a) some scientific purpose; or
  - (b) the purpose of protecting, improving or developing stocks of fish, and has obtained the previous permission in writing of the Scottish Ministers.
- (2) The provisions are—
- (a) sections 2, 5, 8, 9, 17 or 22 of this Act;
  - (b) section 7 of this Act, so far as it relates to the said section 2; and
  - (c) section 30F(1) of the Control of Pollution Act 1974 (c. 40) (pollution of controlled waters).

**29 Exemption from certain offences in respect of certain acts in relation to salmon**

- (1) A person shall not, in respect of any act or omission relating to fishing for or taking salmon, be guilty of a contravention of an enactment prohibiting or regulating that act or omission if the act or omission has been exempted by the Scottish Ministers.
- (2) The Scottish Ministers may exempt an act or omission under subsection (1) above only if they are satisfied that—
- (a) the proprietor of every affected salmon fishery in the salmon fishery district in which the act or omission is to take place, being a salmon fishery entered in the valuation roll; and
  - (b) if there is one, the district salmon fishery board for that district, have previously consented to it.
- (3) In subsection (2) above “affected” means appearing to the Scottish Ministers to be likely to be affected by the exemption.
- (4) An exemption under this section—
- (a) may relate only to such person as may be specified in it;
  - (b) may be subject to such conditions as may be so specified;
  - (c) shall be in writing;
  - (d) shall specify—
    - (i) the limits of the waters to which it relates;
    - (ii) its duration; and
    - (iii) the enactment to which it relates.

**30 Exemptions in relation to fish farming**

- (1) Subject to subsections (2) to (6) below, a person shall not be guilty of a contravention of any of sections 1, 2, 5(1)(b) and (c), 13(2) and (3), 14(1), 15 to 18 and 22(1), or regulations under section 31(1)(a) or (d), of this Act in respect of any act or omission

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if the act or the omission takes place within, and in the course of the operation of, a fish farm.

- (2) There shall be no contravention of paragraph (b) or (c) of section 5(1) of this Act, by virtue of subsection (1) above, in respect of an act referred to in those paragraphs if, and only if, the act is carried out with the consent of the Scottish Ministers.
- (3) For the purposes of subsection (1) above, the act of selling or exporting fish by or on behalf of a person who has reared the fish in a fish farm shall be deemed to be an act carried out within a fish farm in the course of the operation of that farm.
- (4) In any proceedings for an offence under section 15 of this Act in relation to a boat or other thing mentioned in that section which is not in a fish farm, it shall be a defence for the person charged with such offence to prove that the act or omission complained of was necessary for the purpose of the operation of a fish farm.
- (5) It shall be a defence for a person charged with an offence under section 16, 17(2)(b), 18(1)(b) or 22 of this Act to show that that person believed on reasonable grounds that the fish with respect to which the offence is alleged to have been committed were produced by fish farming.
- (6) For the purposes of subsection (5) above “fish farming” means the breeding, rearing or cultivating of fish, whether or not for the purpose of producing food for human consumption; but the reference in that subsection to fish produced by fish farming does not include fish bred, reared or cultivated in captivity which have later been released to the wild.

### *Regulation of salmon fisheries*

## **31 Salmon fishing: general regulations**

- (1) The Scottish Ministers may, after consulting such persons as they consider appropriate, make regulations with respect to—
  - (a) the due observance of the weekly close time for salmon;
  - (b) the construction and use of cruives;
  - (c) the construction and alteration of dams, lades or water wheels so as to afford a reasonable means for the passage of salmon;
  - (d) the meshes, materials and dimensions of nets used in fishing for or taking salmon;
  - (e) obstructions in rivers or estuaries to the passage of salmon;
  - (f) the construction, alteration and use for the control of the passage of salmon of—
    - (i) screens in off-takes from inland waters; and
    - (ii) structures associated with such screens.
- (2) Regulations made under paragraphs (c) or (f) of subsection (1) above—
  - (a) may except from a regulation or part of a regulation any works or any category of works; and
  - (b) are subject to section 32 of this Act.
- (3) The power to make regulations under subsection (1)(d) above includes power—
  - (a) to make different provision for different districts or different parts of a district; and

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*Status: This is the original version (as it was originally enacted).*

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- (b) to except from the application of a regulation or part of a regulation a district or part of a district specified in the regulations.
- (4) For the purposes of section 1 of this Act, and after consulting such persons as they consider appropriate, the Scottish Ministers may by regulations define fishing for or taking salmon by—
  - (a) net and coble;
  - (b) bag net, fly net or other stake net;
  - (c) haaf net,

whether by reference to anything used for the purpose, or to the circumstances in which or method by which it is so used, or to any combination thereof; and, in relation to net and coble, may make different provision as respects inland waters from that made as respects other waters.
- (5) The Scottish Ministers may, after consulting such persons as they consider appropriate, make regulations amending section 13 of this Act, but such regulations shall not reduce—
  - (a) the weekly close time to a period of less than 42 hours;
  - (b) the period within the weekly close time during which it is permitted to fish for salmon by rod and line to less than 24 hours; or
  - (c) the period during which all fishing for salmon is prohibited to less than 24 hours.
- (6) Any proprietor or occupier of a fishery at which stake weirs, stake nets, fly nets or bag nets are used who fails, in regard to such weirs or nets, to do all acts required by regulations made under subsection (1) above for the observance of the weekly close time shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (7) Any person who contravenes a regulation made under this section shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (8) A person who commits an offence under this section may be convicted on the evidence of one witness.

## **32      Exception from regulations with respect to the construction of dams, lades and water wheels**

- (1) No regulations made under this Act with respect to the construction and alteration of dams, lades or waterwheels, so as to afford a reasonable means for the passage of salmon, shall apply to streams or branches or tributaries of rivers which are of such small size as not to be frequented by salmon, nor to dam dykes which in the average state of the river do not obstruct the passage of salmon.
- (2) Where in any intake lade there is a sufficient sluice, it shall not be necessary to remove the said sluice to a higher point of the lade, nor to construct an additional sluice at the intake thereof.
- (3) It shall be lawful to lift any heck from out the water as a means of protection during a flood, or when the river is encumbered with ice, or with weeds and floating leaves to an extent to choke the heck.

### **33 Salmon fishing: regulations as to baits and lures**

- (1) Without prejudice to section 38(5)(b) of this Act and subject to subsections (2) to (7) below, the Scottish Ministers may make regulations prohibiting the use of specified baits and lures for the purposes of the definition of “rod and line” in section 4(1) of this Act in the case of fishing for salmon.
- (2) The Scottish Ministers may make regulations under subsection (1) above only on an application to them made in accordance with subsection (5) below.
- (3) An application under subsection (2) above may be made by—
  - (a) a district salmon fishery board; or
  - (b) one or more such boards jointly,and any reference in this section to an “applicant” shall be construed accordingly.
- (4) Regulations made in respect of an application under subsection (2) above shall be made only in respect of the district of the applicant.
- (5) An application under subsection (2) above shall be accompanied by the applicant’s written proposals which shall state—
  - (a) the baits and lures the use of which it is proposed should be prohibited;
  - (b) the places to which and the times during which the proposed regulations should apply; and
  - (c) the reasons for the proposals,and the application and proposals mentioned in this subsection may be communicated and stored electronically.
- (6) Regulations under subsection (1) above shall specify, subject to such exceptions as may be provided therein, all or any, or a combination of, the following—
  - (a) baits and lures or classes of baits or lures, the use of which is prohibited;
  - (b) times when the regulations apply;
  - (c) areas to which the regulations apply.
- (7) Paragraphs 10 to 15 of schedule 1 to this Act shall apply to the making of regulations under subsection (1) above as they apply to the making of the orders or regulations mentioned in those paragraphs; and references to an applicant, and to an application, under paragraph 1 of that schedule shall be construed respectively as references to an applicant, and to an application, under subsection (2) above.