



# Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 2003 asp 15

## PART 3

### DISTRICT SALMON FISHERY BOARDS

#### *Proprietors of salmon fisheries*

#### **40 Qualified proprietors and upper and lower proprietors**

- (1) A qualified proprietor shall be, for the purposes of this Act, a proprietor of a salmon fishery entered in the valuation roll.
- (2) Where any salmon fishery is not entered or not entered separately in the valuation roll, the assessor shall, on the request of—
  - (a) the clerk to the district salmon fishery board for the district in which the fishery is situated; or
  - (b) where there is no such board for the district, the proprietor of that fishery, value that fishery and enter it in the valuation roll.
- (3) If a salmon fishery is situated in more than one salmon fishery district the assessor shall, on the request of—
  - (a) the clerk to the district salmon fishery board for either or any of these districts; or
  - (b) where there is no such board, the proprietor of that fishery, value that fishery and enter it in the valuation roll according to its value in each district.
- (4) A qualified proprietor shall be an upper proprietor or a lower proprietor for the purposes of this Act according to whether the salmon fishery in question is, respectively, upstream or downstream of a division of a river as defined in subsection (7) or (8) below and, in this Act, “upper proprietor” and “lower proprietor” each means a qualified proprietor.
- (5) A person who is a qualified proprietor of one salmon fishery situated above and another situated below a division referred to in subsection (4) above shall be both an

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*Status: This is the original version (as it was originally enacted).*

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upper proprietor and a lower proprietor, whether or not both fisheries are on the same river in the district, and may act in either capacity or in both capacities in accordance with the provisions of this Act.

- (6) Subject to subsection (5) above, a qualified proprietor in a salmon fishery district shall not be eligible for election, co-option or appointment to the district salmon fishery board for that district in respect of more than one salmon fishery.
- (7) The division referred to in subsection (4) above shall be—
- (a) a line across the river between such points on either bank prescribed by the Scottish Ministers under subsection (8) below; or
  - (b) where the Scottish Ministers have not prescribed such points but a point of division has been fixed in accordance with section 6(4) of the 1862 Act, that point of division; or
  - (c) where no division has been effected under paragraph (a) or (b) above, the normal tidal limit.
- (8) When requested to do so by the district salmon fishery board for the district in which a river is situated, the Scottish Ministers may by order prescribe a point of division on each bank of the river to which the request relates.
- (9) The clerk to a district salmon fishery board shall maintain a roll showing—
- (a) the upper and lower proprietors in the district; and
  - (b) the values of their fisheries as entered in the valuation roll;
- and the board may, if they are satisfied that a name should be added or removed, add or remove it.
- (10) Subject to section 5 of the Sheriff Courts (Scotland) Act 1907 (c. 51) (jurisdiction as regards heritable property), the sheriff may, on summary application made by a person whose request to the board to add or remove a name has not been met, order the board to add or remove that name.

#### **41 Sole proprietor in a salmon fishery district**

Where there is in a salmon fishery district only one proprietor of salmon fisheries, for references in this Act, except in paragraph 1 of schedule 2, to two proprietors of salmon fisheries in a salmon fishery district for which there is no board there shall be substituted references to that sole proprietor.

#### *Mandatories*

#### **42 Mandatories**

- (1) A qualified proprietor or an elected member or convener of a district salmon fishery board may at any time authorise a person to act on behalf of such proprietor, member or convener; and such a person is referred to in this Act as a “mandatory”.
- (2) A mandatory may as such be elected under schedule 2 to this Act as a representative of qualified proprietors or as convener but, subject to subsection (4) below, a person may not authorise another to act as a co-opted member under this Act nor shall a mandatory be co-opted under section 45(2) of this Act.

- (3) A person who is both an upper and a lower proprietor by virtue of section 40(5) of this Act may authorise a person in accordance with this section in either or both of those capacities or may do so in each capacity.
- (4) Where a co-opted member is not a natural person, it may authorise a natural person to represent it for the purposes of this Act.

### *District salmon fishery boards*

## **43 District salmon fishery boards**

- (1) If proprietors of salmon fisheries in a salmon fishery district—
  - (a) form an association for the purpose of the protection or improvement of the fisheries within their district; and
  - (b) elect, in accordance with schedule 2 to this Act, a committee to act for them, that committee shall be the district salmon fishery board for that district; and the purpose of such a board shall be the purpose specified above in respect of the association.
- (2) A district salmon fishery board shall have the powers and duties conferred—
  - (a) on them under this Act; and
  - (b) by any other enactment on a district board within the meaning of the Salmon Fisheries (Scotland) Acts 1862 to 1868.
- (3) Subject to subsection (4) below, a committee mentioned in subsection (1) above shall cease to be the district salmon fishery board for a district on the expiry of a period of three years from the date of the last meeting of proprietors which elected, in accordance with Part 1 of schedule 2 to this Act, such members as require to be elected under Part 2 of that schedule.
- (4) On the coming into force of a designation order the committee within the meaning of this section in respect of a district superseded by the district so designated shall cease to be a district salmon fishery board; and any committee within the meaning of this section which has been constituted in accordance with schedule 2 to this Act in anticipation of the order and in respect of the district designated by the order shall be the district salmon fishery board for that district.
- (5) If a committee ceases to be a district salmon fishery board, the assets and liabilities of that board shall be the assets and liabilities of the members of the association for which the committee acts; but, for the purposes of the winding-up of such an association, any assets of the former board remaining after the settlement of the liabilities of the former board shall be distributed amongst all the proprietors in the district who were liable to the fishery assessment immediately before the date on which the committee ceased to be such a board, according to the valuation of each fishery as entered in the valuation roll at that date.
- (6) A district salmon fishery board shall not be bound by any direction given to them by the association for which the elected members of the board act as a committee.
- (7) There may be a district salmon fishery board for a district whether or not there are any salmon in the waters of that district.
- (8) The Scottish Ministers may by order vary the provisions of schedule 2 to this Act.

#### **44 Financial powers and duties of district salmon fishery boards**

- (1) Each year, a district salmon fishery board shall prepare—
  - (a) a report; and
  - (b) a statement of accounts, which shall be audited,relating to the activities of the board; and the clerk of the board shall call an annual meeting of qualified proprietors in the district for the purposes of considering the report and the audited accounts.
- (2) A district salmon fishery board shall have power to impose an assessment, to be known as the fishery assessment, on each salmon fishery in their district.
- (3) The fishery assessment shall be assessed at such uniform rate as is determined for all fisheries in the district by the board and shall be exigible according to the valuation of a fishery as entered in the valuation roll.
- (4) Subsections (2) and (3) of section 40 of this Act shall apply for the purposes of this section as they apply for the purposes of that section.
- (5) Arrears of fishery assessment may, as the case may be, be recovered by—
  - (a) the district salmon fishery board which imposed the assessment; or
  - (b) the district salmon fishery board for a district created by a designation order in respect of an assessment imposed by a district salmon fishery board for a district superseded by that order,by action for payment of money.
- (6) The powers under subsection (5) above to recover arrears of fishery assessment include power to recover interest, chargeable at such rate as the Scottish Ministers shall determine, on such arrears from, in the case of recovery of arrears under subsection (5) above which have been outstanding for at least three months from the date of issue of a notice of assessment, that date until payment or the commencement of an action for payment, whichever is the earlier.
- (7) A board may, in carrying out their purpose under this Act, borrow—
  - (a) an amount not exceeding twice the amount of the fishery assessment collected within the twelve month period immediately prior to the date of the decision to borrow; or
  - (b) such higher sum as is approved by the proprietors of fisheries which together amount to four fifths of the total value of fisheries in the district as entered in the valuation roll.
- (8) In subsection (7)(a) above, “collected” means collected in—
  - (a) the district for which that board are the district salmon fishery board; and
  - (b) if that district has been designated in an order made under section 34(2) of this Act within that twelve month period, all the districts superseded by that order.
- (9) In carrying out their purpose, a district salmon fishery board may authorise expenditure, including expenditure for the acquisition of heritable property, out of sums accruing to them from—
  - (a) the fishery assessment;
  - (b) the exercise of the power, under subsection (7) above, to borrow; or
  - (c) any other source;

but they shall not pay to any member of that board any salary or fees for acting in any way as a member of or under that board.

#### **45 General powers and duties of district salmon fishery boards**

- (1) A district salmon fishery board may do such acts, execute such works and incur such expenses as may appear to them expedient for—
  - (a) the protection or improvement of the fisheries within their district;
  - (b) the increase of salmon; or
  - (c) the stocking of the waters of the district with salmon.
- (2) The elected members of a district salmon fishery board shall, in accordance with Part 2 of schedule 2 to this Act, co-opt representatives of salmon anglers and tenant netmen.
- (3) On such terms and conditions as the board think fit, a district salmon fishery board—
  - (a) shall appoint a person to act as clerk to the board; and
  - (b) may appoint persons to act as water bailiffs, or in such other capacity as the board see fit.
- (4) A district salmon fishery board may sue or be sued in the name of their clerk.
- (5) References in any enactment to water bailiffs shall include references to water bailiffs appointed under this section.

#### **46 Proceedings of district salmon fishery boards**

- (1) The first meeting of a district salmon fishery board shall be at the date, time and place determined by the members of the board who were elected at the meeting of qualified proprietors called under paragraph 1 of schedule 2 to this Act but in any case shall be no later than 21 days after that meeting.
- (2) A district salmon fishery board shall determine the quorum for their meetings.
- (3) At any meeting of the board, each member shall have one vote, subject to the following exceptions—
  - (a) the convener, in that capacity, shall have both a casting and a deliberative vote; and
  - (b) a person who is both an upper proprietor and a lower proprietor by virtue of section 40(5) of this Act shall have a vote in either capacity or in both capacities according to the capacity or capacities in which that person has been elected or co-opted.
- (4) No act or proceeding of a district salmon fishery board shall be questioned on account of any vacancy in their membership and no defect in the qualification or appointment of any person acting as a member shall vitiate any proceedings of the board in which that member has taken part.
- (5) The minutes of proceedings of district salmon fishery boards shall be signed by the convener and shall be conclusive evidence of the proceedings; and a meeting so minuted shall be presumed to have been duly convened and held and all members thereof to have been duly qualified.
- (6) On the written request of any two members of the board, the convener shall be bound to convene a meeting of the board within fourteen days of receiving the request and the

clerk shall give notice to each member of the date, time and place of and the agenda for that meeting, and the request mentioned in this subsection may be communicated and stored electronically.

#### **47 Tenure of office**

- (1) Before the expiry of a period of three years from—
  - (a) the first election of the members of the board; or
  - (b) the last meeting of qualified proprietors called under this section,the clerk to that board shall call a meeting of qualified proprietors in that district for the purpose of electing or re-electing, in accordance with Part 1 of schedule 2 to this Act, such members as require to be elected under Part 2 of that schedule; and at that meeting each member of the board shall first resign.
- (2) The provisions of schedule 2 to this Act, apart from paragraph 1, shall apply to further elections as they apply to the first election of the members.
- (3) Without prejudice to subsection (1) above, a member of a district salmon fishery board may resign at any time and a person who ceases to meet the requirements of this Act for membership of a district salmon fishery board shall cease to be a member of that board.
- (4) Where a person is both an upper and a lower proprietor by virtue of section 40(5) of this Act, subsection (3) above shall have effect as respects either or each such capacity.
- (5) Where a vacancy in their number occurs, the board shall, so far and as soon as is reasonably practicable, fill that vacancy by—
  - (a) the electing by the elected members from amongst themselves of a new convener;
  - (b) the appointing by the elected members of a qualified proprietor in the district as a representative of qualified proprietors according to the rules in schedule 2 to this Act regarding the balance between upper and lower proprietors; or
  - (c) the co-opting by the board of a representative of salmon anglers or of tenant netsmen in accordance with that schedule,as the case may be, and a person appointed under paragraph (b) above shall be an elected representative of qualified proprietors for the purposes of this Act.