



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

2003 asp 15

VALID FROM 01/04/2005

## PART 5

### ENFORCEMENT

#### *Powers of constables and water bailiffs*

#### **52 Grant of warrant to search premises or vehicles**

- (1) Any sheriff or justice of the peace, upon information on oath that there is probable cause to suspect that—
- (a) a breach of any of the provisions of this Act has been committed; or
  - (b) any salmon or trout illegally taken, or any illegal nets or other engines or instruments are concealed,
- on any premises or in any vehicle, may by warrant under the hand of such sheriff or justice authorize and empower any constable or water bailiff to enter such premises or vehicle, if necessary by force, for the purpose of detecting such offence, or such concealed fish or instruments, and to seize all illegal nets, engines or other instruments, or any salmon or trout illegally taken, that may be found on such premises or in such vehicle.
- (2) A warrant granted under this section—
- (a) may specify the time or times in the day or night at which it may be exercised; and
  - (b) shall not continue in force for more than one week from the date on which it is granted.
- (3) A person authorised by a warrant issued under subsection (1) above to search any premises or any vehicle may search every person who is found in, or whom the person

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so authorised has reasonable ground to believe to have recently left or to be about to enter, those premises or that vehicle, as the case may be.

- (4) No person shall in pursuance of any search authorised by this section be searched except by a person of the same sex.
- (5) This section is subject to section 56 of this Act.

### **53 Powers of constables**

- (1) A constable who has reasonable grounds for suspecting that an offence against any of the provisions of this Act has been committed, and that evidence of the commission of the offence is to be found in any vehicle, but who considers that by reason of urgency or other good cause it is impracticable to apply for a warrant to search such vehicle, may stop and search that vehicle and any person who is found in, or whom there are reasonable grounds to believe to have recently left or to be about to enter the vehicle.
- (2) A constable who has reasonable grounds for suspecting that an offence against any of the provisions of this Act is being committed and that evidence of the commission of the offence is to be found in any premises (other than a dwelling house or any yard, garden, outhouses and pertinents belonging thereto or usually enjoyed therewith) but who considers that by reason of urgency or other good cause it is impracticable to apply for a warrant to search such premises, may search them without warrant.
- (3) Any constable may exercise any of the powers conferred on a water bailiff by section 55 of this Act.
- (4) No person shall in pursuance of any search authorised by this section be searched except by a person of the same sex.
- (5) This section is subject to section 56 of this Act.

### **54 Powers of constables and water bailiffs to enter land**

- (1) Any constable or water bailiff may enter and remain upon any land in the vicinity of any river or of the sea coast during any hour of the day or night for the purpose—
  - (a) of preventing a breach of the provisions of this Act; or
  - (b) of detecting persons guilty of any breach of those provisions.
- (2) This section is subject to section 56 of this Act.

### **55 Powers of water bailiffs**

- (1) Any water bailiff appointed by a district salmon fishery board may do within the district of that board all or any of the following things—
  - (a) examine any dam, fixed engine or obstruction, or any lade, and for that purpose enter on any land;
  - (b) stop and search any boat which is used in fishing or any boat which there is reasonable cause to suspect of containing salmon or trout;
  - (c) search and examine nets or other instruments used in fishing or any basket, pocket or other receptacle capable of carrying fish, which there is reasonable cause to suspect of containing salmon or trout illegally taken;

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- (d) seize any fish, instrument or article, boat or vehicle liable to be forfeited in pursuance of this Act.
- (2) A water bailiff appointed by a district salmon fishery board who has reasonable grounds for suspecting that an offence against any of the provisions of this Act has been committed and that evidence of the commission of the offence is to be found in any vehicle on any private land adjoining any water within the district of the district salmon fishery board by which that bailiff was appointed or any adjoining district or in any stationary vehicle on a road within the meaning of the Roads (Scotland) Act 1984 (c. 54) adjoining such water or such land, may search that vehicle.
- (3) Any water bailiff appointed by a district salmon fishery board may exercise in any district adjoining that of the board by which that bailiff was appointed any power which that bailiff may lawfully exercise in the district of such board.
- (4) The production by a water bailiff of the instrument of appointment purporting to be signed on behalf of the district salmon fishery board by which that bailiff was appointed, or of any badge or other device indicating such appointment and purporting to be issued by such board, shall be a sufficient warrant for the exercise of any power conferred on such water bailiff by or in pursuance of this Act.
- (5) The Scottish Ministers may appoint persons as water bailiffs, and any person so appointed may exercise any of the powers conferred by this Act on water bailiffs appointed by a district salmon fishery board, but only in relation to such district or part of a district as may be specified in the instrument of appointment; and the production of the instrument of appointment purporting to be signed by or on behalf of the Scottish Ministers shall be a sufficient warrant for the exercise of any such power.
- (6) It shall be lawful for a water bailiff, without any warrant or other authority than this Act, to seize and detain any person found committing an offence against any provision of this Act and to deliver such person to a constable.
- (7) For the purposes of this section and section 54 of this Act “land” includes land covered by water, but does not include a dwelling house or any yard, garden, outhouses and pertinents belonging thereto or usually enjoyed therewith.
- (8) This section is subject to section 56 of this Act.

## **56 General enforcement provisions not to apply in relation to protection orders**

Without prejudice to any other enactment or rule of law, sections 52, 53, 54, 55 and 60 of this Act shall not apply in relation to the enforcement of protection orders made under section 48 of this Act.

*Further provision as to offences*

## **57 Offences by bodies corporate**

- (1) Where an offence under any of the provisions of this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any

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such capacity, that person as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with any functions of management as if that person were a director of the body corporate.

## **58 Offences in relation to obstruction**

Any person who refuses to allow a constable or a water bailiff to exercise any power conferred on such constable or bailiff by or in pursuance of this Act, or who obstructs the exercise of any such power, shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding 3 months or to both such fine and such imprisonment.

### *Powers of court*

## **59 Power of court in trial for an offence to convict of another**

If, upon a trial for an offence under section 9, 16 or 20 of this Act, or any rule of law relating to reset, the court is satisfied that the accused is—

- (a) not guilty of the offence charged; but
- (b) guilty of another of those offences,

it may acquit the accused of the offence charged but find the accused guilty of the other offence and the accused shall then be liable to the punishment for that other offence.

## **60 Forfeiture**

- (1) Any person who is convicted of an offence against any of the provisions of this Act shall be liable to the forfeiture of—
- (a) any fish illegally taken by that person or in that person's possession at the time of the offence;
  - (b) any instrument or article by which the offence was committed;
  - (c) any vehicle or boat used by that person to assist in the commission of the offence.
- (2) Subject to subsection (3) below, anything forfeited under this section shall be disposed of as the court may direct.
- (3) Any fish seized under this section as liable to forfeiture may be sold by the person seizing it, and the net proceeds of the sale shall be liable to forfeiture in the same manner as the fish sold.
- (4) No person shall be subject to any liability on account of any neglect or failure to exercise the powers conferred by this section.
- (5) This section is subject to section 56 of this Act.

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## **61 Defences**

- (1) Subsection (2) applies where in accordance with a provision mentioned in subsection (3) it is a defence for a person charged with an offence to prove a particular matter.
- (2) If the person adduces evidence which is sufficient to raise an issue with respect to the matter the court or jury shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (3) The provisions in respect of which subsection (2) applies are sections 16, 19, 20 and 30 of this Act.

## **62 Jurisdiction in respect of offences committed on sea coast or at sea**

Any offence committed under this Act on the sea coast, or at sea beyond the ordinary jurisdiction of any sheriff or justices of the peace, shall be held to have been committed within the body of any sheriffdom abutting on such sea coast, or adjoining such sea, and may be tried and punished accordingly.

## **63 Disqualification of justices**

No justice of the peace shall be entitled to hear any case in respect of an offence committed on that justice's own fishery.

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