



Salmon Act 1986

1986 CHAPTER 62

PART II

OTHER PROVISIONS APPLYING TO SCOTLAND

20 Additional powers in respect of licensing and regulation of salmon dealing

- (1) Without prejudice to the generality of section 44 of the Civic Government (Scotland) Act 1982 (power to designate additional activities as subject to licensing and regulation) an order as respects dealing in salmon made under that section may—
- (a) define dealing in salmon and so define it as to—
 - (i) include such acts preparatory to or connected with dealing in salmon;
 - (ii) exclude dealing in such class or classes of salmonas may be specified in the order;
 - (b) provide that the offence under section 7(1) of that Act (doing anything for which a licence is required without having one) shall be punishable—
 - (i) on summary conviction, by imprisonment for a term not exceeding three months, or a fine not exceeding the statutory maximum or both;
 - (ii) on conviction on indictment, by imprisonment for a term not exceeding two years, or a fine or both;
 - (c) provide that it shall be an offence for any person, other than a person holding a salmon dealer's licence, to buy salmon from or sell salmon to a person not having such a licence;
 - (d) provide that the offences under the said section 7(1) and any provision under paragraph (c) above shall be subject to such exceptions as may be specified in the order;
 - (e) provide that a licence shall be required only for such class or classes of dealing in salmon and dealing in such class or classes of salmon as may be specified in the order;
 - (f) provide as to the exercise of powers of entry and search by water bailiffs and persons appointed by the Secretary of State under section 10(5) of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951

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but not so as to enable these powers to be exercised in any dwelling house or any yard, garden, outhouses and pertinents belonging thereto or usually enjoyed therewith.

- (2) The Secretary of State shall have power, by order to prescribe, or to prescribe the maximum amounts of, the fees which the licensing authority may determine and charge under sub-paragraph (1) of paragraph 15 of Schedule 1 to the said Act of 1982 in respect of the licensing of dealing in salmon; and in that respect the licensing authority's powers under that paragraph shall be subject to the provisions of any such order.
- (3) An order made under subsection (2) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

21 Permitted methods of fishing for salmon

In section 2 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (methods of fishing)—

- (a) after subsection (1) there shall be inserted the following subsection—
 - “(1A) No person shall fish for or take salmon in any waters in a salmon fishery district other than inland waters, except by rod and line, net and coble or bag net, fly net or other stake net.”
- (b) after subsection (2) there shall be inserted the following subsections—
 - “(2A) After consulting such persons as he considers appropriate, the Secretary of State may, for the purposes of this section, by regulations define fishing for or taking salmon by—
 - (a) net and coble ;
 - (b) bag net, fly net or other stake 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.
 - (2B) The power to make regulations under this section includes power to amend or repeal section 62 of the Tweed Fisheries Act 1857 and section 12 and 13 of the Tweed Fisheries Amendment Act 1859.
 - (2C) Regulations made under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.

22 Offence of possessing salmon which have been illegally taken, killed or landed

- (1) After section 7 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 there shall be inserted the following section—

“7A Offence of possessing salmon which have been illegally taken, killed or landed.

- (1) A person who—

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- (a) is in possession of salmon and believes; or
 - (b) is in possession of salmon in circumstances in which it would be reasonable for him to suspectthat a relevant offence has at any time been committed in relation to the salmon shall be guilty of an offence and liable—
 - (i) on summary conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding the statutory maximum or both;
 - (ii) on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine or both.
 - (2) It shall be a defence in proceedings for an offence under this section to show that no relevant offence had in fact been committed in relation to the salmon.
 - (3) It shall be lawful to convict a person charged under this section on the evidence of one witness.
 - (4) 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.
 - (5) In subsection (4) above, " offence ", in relation to the taking, killing or landing of salmon either in Scotland or in England or 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.
 - (7) Where an offence under 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 such capacity, he as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
 - (8) Where the affairs of a body corporate are managed by its members, subsection (7) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.”.
- (2) In section 11 of that Act (power of search)—
- (a) in each of subsections (1) and (3) for the words " three and four" there shall be substituted " 1 to 4, 7 and 7A " ;
 - (b) after the said subsection (3) there shall be inserted the following subsection—
 - “(3A) Where a constable has reasonable grounds for suspecting that an offence against section 7A 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

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and pertinents belonging thereto or usually enjoyed therewith) but by reason of urgency or other good cause it is impracticable to apply for a warrant to search such premises, he may search them without warrant.”;

- (c) in subsection (4)—
- (i) for the words " section three or section four " there shall be substituted " any of the provisions of sections 1 to 4, 7 and 7A " ;
 - (ii) after the word " thereon " there shall be inserted the words—

“or in any stationary vehicle on—

- (a) a road within the meaning of the Roads (Scotland) Act 1984; or
- (b) a highway within the meaning of the Highways Act 1980

adjoining such water or such land,”.

23 Power of court in trial of one offence to convict of another

If, upon a trial for an offence under—

- (a) section 10 of the Tweed Fisheries Amendment Act 1859 (having or selling salmon taken from the River Tweed during annual close time);
- (b) section 21 of the Salmon Fisheries (Scotland) Act 1868 (buying or selling salmon in close time);
- (c) section 7 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (possessing illegally taken salmon or trout);
- (d) section 7A of the said Act of 1951 (possessing illegally taken salmon); or
- (e) any rule of law relating to reset;

the court is not satisfied that the accused is guilty of the offence charged but is satisfied that he is guilty of another of these offences, it may acquit him of the offence charged but find him guilty of the other offence and he shall then be liable to the same punishment as for that other offence.

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 an introduction of salmon or salmon eggs into such waters if—
 - (a) he has the previous written consent of the district salmon fishery board for the salmon fishery district in which these waters are situated; or
 - (b) the waters constitute or are included in a fish farm within the meaning of the Diseases of Fish Act 1937.

25 Fixed engines in the Solway

After section 7 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951, there shall be inserted the following section—

“7B 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 within the limits of the Solway Firth in Scotland 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 certified as privileged under section 5 of the Solway Salmon Fisheries Commissioners (Scotland) Act 1877.”

26 Poaching in the Esk

- (1) Section 21 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951, (non-application of that Act to the River Esk in Scotland) shall be renumbered as subsection (1) of that section and—
 - (a) at the beginning of that subsection there shall be inserted the words " Subject to subsection (2) below, " ; and
 - (b) after that subsection there shall be added the following subsection—

“(2) Section 1 of this Act and sections 3 and 18 to 20 so far as relating to an offence under that section shall apply to so much of the River Esk, including its banks and tributary streams, as is situated in Scotland.”.
- (2) In section 39 of the Salmon and Freshwater Fisheries Act 1975 (application of that Act to certain Border waters including the River Esk) there shall be inserted after subsection (1) the following subsection—

“(1A) In the application of this Act, under subsection (1)(b) above, to the River Esk in Scotland, references to this Act in sections 31 to 33 and section 36 shall be construed as including references to sections 1, 3 and 18 to 20 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 as applied to that River by section 21 of that Act.”.
- (3) In section 43(3) of the said Act of 1975 (Scottish extent) after the words " 39(1)" there shall be inserted the word " ,(1A) ".
- (4) Section 9 of the Solway Act 1804 shall, so far as relating to salmon, cease to have effect in relation to so much of the River Esk, including its banks and tributary streams, as is situated in Scotland.

27 Exemption from certain offences in respect of certain acts

- (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 Secretary of State.

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- (2) The Secretary of State may exempt an act or omission under subsection (1) above only if he is 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; and, in this subsection, " salmon fishery district " includes the River Tweed and, in relation to that river, " district salmon fishery board " means the River Tweed Council.
- (3) In subsection (2) above, " affected " means appearing to the Secretary of State to be likely to be affected by the exemption.
- (4) An exemption under this subsection—
- (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.
- (5) In this section, " enactment" includes any instrument made after the passing of this Act under any enactment.

28 Exemption from certain offences in respect of acts done for scientific etc. purposes

- (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) he has obtained the previous permission in writing—
 - (i) if the act or omission is one to which this subparagraph applies, of the district salmon fishery board for the salmon fishery district in which it takes place or of the Secretary of State ; and
 - (ii) in any other case, of the Secretary of State 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—
- (a) takes place in a salmon fishery district for which there is a district salmon fishery board ; and
 - (b) is a contravention of—
 - (i) section 45 of the Tweed Fisheries Act 1857 ;
 - (ii) section 6 of the Tweed Fisheries Amendment Act 1859 ;
 - (iii) section 18, 19 or 20 of the Salmon Fisheries (Scotland) Act 1868 ; or

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- (iv) section 2 or 4(c) of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951.
- (3) A permission under subsection (1) above shall specify the act or omission permitted and the enactment to which the permission relates.
- (4) In this section—
- (a) references to a salmon fishery district and to a district salmon fishery board include respectively references to the River Tweed and to the River Tweed Council;
 - (b) "enactment" includes any instrument made after the passing of this Act under any enactment.

29 Application of sections 27 and 28 to River Esk and River Tweed

- (1) Sections 27 and 28 of this Act, as respects any enactment—
- (a) which does not apply to so much of the River Esk, including its banks and tributary streams, as is situated in Scotland but otherwise extends to Scotland, shall likewise not apply to that part of that River;
 - (b) which applies to so much of the River Esk, with its banks and tributary streams up to their source, as is situated in Scotland but otherwise does not extend to Scotland, shall not apply to that part of that River;
 - (c) which extends to Scotland only but also applies to so much of the River Tweed as is situated outwith Scotland, shall likewise apply to that part of that River.
- (2) In this section, "enactment" includes any instrument made after the passing of this Act under any enactment.

30 Prosecution of offences under the Act of 1868

- (1) Section 30 and sections 38 to 40 of the Salmon Fisheries (Scotland) Act 1868 (prosecution of offences at the instance of the clerk to a district board or of any other person) shall cease to have effect but any proceedings begun before the commencement of this section shall proceed as if this section had not been passed.
- (2) A person who commits an offence under section 15 or sections 18 to 24 of that Act may be convicted on the evidence of one witness.