Salmon and Freshwater Fisheries Act 1975

1975 CHAPTER 51

An Act to consolidate the Salmon and Freshwater Fisheries Act 1923 and certain other enactments relating to salmon and freshwater fisheries, and to repeal certain obsolete enactments relating to such fisheries. [1st August 1975]

Extent Information

E1 Act mainly E.W. but for exceptions see ss. 39, 43(2)(3)

Modifications etc. (not altering text)

C1 Act: power to tranfer functions conferred (1.4.1996) by 1995 c. 25, **s. 2(1)(a)(v)** (with ss. 115, 117); S.I. 1996/186, **art. 3**
Act amended (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 2(4)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
Act (except s. 38): transfer of certain functions (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**

C2 Functions of Minister of Agriculture, Fisheries and Food and of Minister and Secretary of State jointly under this Act in relation to Welsh National Water Development Authority or land or waters in the Authority's area now exercisable (W.) by Secretary of State: S.I. 1978/272, **Sch. 3 para. 6(1)**

C3 Joint functions of Minister of Agriculture, Fisheries and Food and Secretary of State under this Act in relation to Severn-Trent Water Authority or land or waters in the Authority's area now exercisable (W.) by Minister: S.I. 1978/272, **Sch. 3 para. 6(2)**

C4 Act excluded by S.I. 1982/1420, **arts. 4**, 6

C5 By Salmon Act 1986 (c. 62, SIF 52:2), **ss. 31(2)**(*f*), 43(4) it is provided that power to apply Act is conferred (E.W. and as mentioned in the said s. 43(4) (border rivers))

C6 Act excluded by S.I. 1988/1668, **art. 2(1)**

C7 Act amended and certain functions transferred by Water Act 1989 (c. 15, SIF 130), s. 141, **Sch. 17 para. 1(4)(b)(5)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

C8 Act extended (1.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 2(6)(b)**, 211(6), 225(2) (with ss. 16(6), 179, 222(3), 224(1), 225(4), Sch. 22 para. 1, Sch. 23 para. 6).
Act saved (1.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 105(4)**, 225(2) (with ss. 16(6), 113(4), 179, 222(3), 224(1), 225(4), Sch. 22 paras. 1, 2, 4, Sch. 23 para. 6).
Power to modify Act conferred (1.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), ss. 115(1)(a), 210(1), 225(2), **Sch. 25 para. 6(3)(c)** (with ss. 16(6), 179, 222(3), 224(1), 225(4), Sch. 22 para. 1, Sch. 23 para. 6).

Status: *Point in time view as at 12/01/2010.*
Changes to legislation: *There are currently no known outstanding effects for the Salmon and Freshwater Fisheries Act 1975. (See end of Document for details)*

Certain definitions in Act applied (1.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), ss. 142(3), 156(3), 210(1), 212(4), 225(2), **Sch. 25 para. 6(7)** (with ss. 16(6), 179, 222(3), 224(1), 225(4), Sch. 22 para. 1, Sch. 23 para. 6).

Commencement Information

I1 Act wholly in force at Royal Assent

PART I

PROHIBITION OF CERTAIN MODES OF TAKING OR DESTROYING FISH, ETC.

1 Prohibited implements.

(1) [F1]... no person shall—

(a) use any of the following instruments, that is to say—

(i) a firearm within the meaning of the [M1]Firearms Act 1968;

(ii) an otter lath or jack, wire or snare;

(iii) a crossline or setline;

(iv) a spear, gaff,**[**[F2] tailer, **]** stroke-haul, snatch or other like instrument;

(v) a light;

for the purpose of taking or killing **[**[F3] salmon, trout, eels, lampreys, smelt, shad, freshwater fish and any specified fish in any waters **]**;

(b) have in his possession any instrument mentioned in paragraph (*a*) above intending to use it to take or kill **[**[F4] any such fish in any waters **]**; or

(c) throw or discharge any stone or other missile for the purpose of taking or killing, or facilitating the taking or killing of **[**[F5] any such fish in any waters **]**.

[[F6](1A) In this section " specified fish " means fish of such description as may be specified for the purposes of this section by order under section 40A below.

(1B) The appropriate national authority may by order amend subsection (1)(a) above so as to—

(a) add any instrument to it; or

(b) remove any instrument for the time being specified in it.**]**

(2) If any person contravenes this section, he shall be guilty of an offence unless he proves to the satisfaction of the court that the act was done for the purpose of the preservation or development of a private fishery and with the previous permission in writing of the water authority **[**[F7]for the area in which the act was done**]**.

(3) In this section—

"crossline" means a fishing line reaching from bank to bank across water and having attached to it one or more lures or baited hooks;

"otter lath or jack" includes any small boat or vessel, board, stick or other instrument, whether used with a hand line, or as auxiliary to a rod and line, or otherwise for the purpose of running out lures, artificial or otherwise;

"setline" means a fishing line left unattended in water and having attached to it one or more lures or baited hooks;

"stroke-haul or snatch" includes any instrument or device, whether used with a rod and line or otherwise, for the purpose of foul hooking any fish.

[[F8](3A) References in this section to any waters include waters adjoining the coast of England and Wales to a distance of six nautical miles measured from the baselines from which the breadth of the territorial sea is measured.**]**

[F9](4) . . . . . .

Textual Amendments

F1 Words in s. 1(1) repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 215(7)(a), 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 10, 27(b)

F2 Word in s. 1(1)(a)(iv) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 215(2)(a)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 10

F3 Words in s. 1(1)(a) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 215(2)(b)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 10

F4 Words in s. 1(1)(b) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 215(3)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 10

F5 Words in s. 1(1)(c) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 215(4)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 10

F6 S. 1(1A)(1B) inserted (12.11.2009 for specified purposes, 12.1.2010 in so far as not already in force) by Marine and Coastal Access Act 2009 (c. 23), **ss. 215(5)**, 324(1)(c), 324(1)(d); S.I. 2009/3345, art. 2, Sch. para. 10

F7 Words repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

F8 S. 1(3A) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 215(6)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 10

F9 S. 1(4) repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 215(7)(b), 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 10, 27(b)

Marginal Citations

M1 1968 c. 27.

2 Roe, spawning and unclean fish, etc.

(1) Subject to subsection (5) below, any person who, for the purpose of fishing for **[**[F10] salmon, trout, eels, lampreys, smelt, shad, freshwater fish or any specified fish in any waters **]**—

(a) uses any fish roe; or

(b) buys, sells, or exposes for sale, or has in his possession **[**[F11] any fish roe **]**,

shall be guilty of an offence.

(2) Subject to subsections (3)**[**[F12] , (3A) **]** and (5) below, any person who—

(a) knowingly takes, kills or injures, or attempts to take, kill or injure, any **[**[F13] salmon, trout, lamprey, smelt, shad, freshwater fish or specified fish in any waters **]** which is unclean or immature; or

(b) buys, sells, or exposes for sale, or has in his possession **[**[F14] any such fish **]** which is unclean or immature, or any part of any such fish,

shall be guilty of an offence.

(3) Subsection (2) above does not apply to any person who takes a fish accidentally and returns it to the water with the least possible injury.

[[F15](3A) Subsection (2) above does not apply where a person takes an immature freshwater fish in circumstances prescribed by byelaws.**]**

(4) Subject to subsection (5) below, any person who, except in the exercise of a legal right to take materials from any waters, wilfully disturbs any spawn or spawning fish, or any bed, bank or shallow on which any spawn or spawning fish may be, shall be guilty of an offence.

(5) A person shall not be guilty of an offence under this section in respect of any act, if he does the act for the purpose of the artificial propagation of **[**[F16] fish of any description **]** or for some scientific purpose or for the purpose of the preservation or development of a private fishery and has obtained the previous permission in writing of the water authority **[**[F17]for the area**]**.

[[F18](6) In this section "specified fish" means fish of such description as may be specified for the purposes of this section by order under section 40A below.

(7) Subsection (3A) of section 1 above applies for the purposes of this section.**]**

Textual Amendments

F10 Words in s. 2(1) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 216(2)(a)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 10

F11 Words in s. 2(1)(b) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 216(2)(b)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 10

F12 Word in s. 2(2) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 216(3)(a)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 10

F13 Words in s. 2(2)(a) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 216(3)(b)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 10

F14 Words in s. 2(2)(b) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 216(3)(c)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 10

F15 S. 2(3A) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 216(4)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 10

F16 Words in s. 2(5) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 216(5)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 10

F17 Words repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

F18 S. 2(6)(7) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 216(6)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 10

Modifications etc. (not altering text)

C9 S. 2(2)(*a*) amended by Fisheries Act 1981 (c. 29, SIF 52:1), s. 33(1), **Sch. 4 Pt. I para. 1**

C10 S. 2(2)(*b*) amended by Fisheries Act 1981 (c. 29, SIF 52:1), s. 33(5), **Sch. 4 Pt. II para. 26**

3 Nets.

(1) Any person who shoots or works any seine or draft net for salmon or migratory trout in any waters across more than three-fourths of the width of those waters shall be guilty of an offence.

(2) Subject to subsection (3) below, any person who, except in a place where smaller dimensions are authorised by byelaw, takes or attempts to take salmon or migratory

trout with any net that has a mesh of less dimensions than 2 inches in extension from knot to knot (the measurement to be made on each side of the square), or 8 inches measured round each mesh when wet, shall be guilty of an offence.

(3) In subsection (2) above "net" does not include a landing net in use as auxiliary to angling with rod and line.

(4) The placing of two or more nets the one behind the other or near to each other in such manner as practically to diminish the mesh of the nets used, or the covering of the nets used with canvas, or the using of any other device so as to evade subsection (2) above, shall be deemed to be a contravention of that subsection.

Modifications etc. (not altering text)

C11 S. 3 amended by Fisheries Act 1981 (c. 29, SIF 52:1), s. 33(1), **Sch. 4 Pt. I para. 2**

4 Poisonous matter and polluting effluent.

(1) [F19]... any person who causes or knowingly permits to flow, or puts or knowingly permits to be put, into any waters containing fish or into any tributaries of waters containing fish, any liquid or solid matter to such an extent as to cause the waters to be poisonous or injurious to fish or the spawning grounds, spawn or food of fish, shall be guilty of an offence.

[F20](2) . . . . . .

(3) Proceedings under this section shall not be instituted except by the water authority [F21] . . .or by a person who has first obtained a certificate from the Minister that he has a material interest in the waters alleged to be affected.

Textual Amendments

F19 Words in s. 4(1) repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. para. 27(b)

F20 S. 4(2) repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 233(2)(a), 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 16, 27(b)

F21 Words repealed by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

Modifications etc. (not altering text)

C12 S. 4 amended by Water Act 1989 (c. 15, SIF 130), **ss. 103(1)**, 113(4), 123(1) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
S. 4 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para.4**

C13 S. 4 excluded (E.W.) (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2, 4(2), **Sch. 1 para. 30(1)**

Status: *Point in time view as at 12/01/2010.*
Changes to legislation: *There are currently no known outstanding effects for the Salmon and Freshwater Fisheries Act 1975. (See end of Document for details)*

5 Prohibition of use of explosives, poisons or electrical devices and of destruction of dams etc.

(1) Subject to subsection (2) below, no person shall use in or near any waters (including waters adjoining the coast of England and Wales **[**[F22]to a distance of six nautical miles measured from the baselines from which the breadth of the territorial sea is measured**]** any explosive substance, any poison or other noxious substance, or any electrical device, with intent thereby to take or destroy fish.

(2) Subsection (1) above shall not apply to the use by a person of any substance or device—

(a) for a scientific purpose, or for the purpose of protecting, improving or replacing stocks of fish; and

(b) with the permission in writing of the water authority**[**[F23] , for which the Agency may charge a fee **]**[F24] . . .;

[F25] . . .

(3) No person shall, without lawful excuse, destroy or damage any dam, flood-gate or sluice with intent thereby to take or destroy fish.

(4) A person who contravenes subsection (1) or (3) above or who, for the purpose of contravening subsection (1) above, has in his possession any explosive or noxious substance or any electrical device, shall be guilty of an offence.

(5) The use of any substance in any waters for a purpose falling within paragraph (*a*) of subsection (2) above, and with the permission mentioned in paragraph (*b*) of that subsection, shall not constitute an offence under—

(a) section 4 above;

(b) any byelaws made under paragraph 31 of Schedule 3 below;

[(c) section 85(1) of the Water Resources Act 1991;**]**

(d) section 22(1)(*a*) of the [M2]Rivers (Prevention of Pollution) (Scotland) Act 1951.

[F26](6) . . . . . .

Textual Amendments

F22 Words substituted by Fishery Limits Act 1976 (c. 86), **Sch. 2 para. 20**

F23 Words in s. 5(2)(b) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 3(3)**; S.I. 2009/3345, art. 2, Sch. para. 15(b)

F24 Words repealed by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

F25 Words in s. 5(2) repealed (1.4.1996) by 1995 c. 25, ss. 105, 120(3), Sch. 15 para. 7, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F26 S. 5(6) repealed by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

Modifications etc. (not altering text)

C14 S. 5(1) amended by Fisheries Act 1981 (c. 29, SIF 52:1), s. 33(1), **Sch. 4 Pt. I para. 3**

C15 S. 5(4) amended by Fisheries Act 1981 (c. 29, SIF 52:1), s. 33(1), **Sch. 4 Pt. I para. 3**

Marginal Citations

M2 1951 c. 66.

PART II

OBSTRUCTIONS TO PASSAGE OF FISH

6 Fixed engines.

[[F27](1) Any person who places or uses an unauthorised fixed engine in any inland or tidal waters **[**[F28]which are within the area of any water authority**]]** shall be guilty of an offence

(2) A person acting under directions to that effect given by the water authority [F29] . . . may take possession of or destroy an engine placed or used in contravention of this section.

(3) In subsection (1) above "unauthorised fixed engine" means any fixed engine other than—

(a) a fixed engine certified in pursuance of the [M3]Salmon Fishery Act 1865 to be a privileged fixed engine; or

(b) a fixed engine which was in use for taking salmon or migratory trout during the open season of 1861, in pursuance of an ancient right or mode of fishing as lawfully exercised during that open season, by virtue of any grant or charter or immemorial usage. **[**[F30]; or**]**

[[F30](c) a fixed engine the placing and use of which is authorised by byelaws made by a water authority [F31] . . . or by byelaws made by a local fisheries committee by virtue of section 37(2) of the Salmon Act 1986.**][**[F32]; or**]**

[[F32](d) a fixed engine which is placed and used by **[**[F33]the Agency**]** with the consent of, or in accordance with a general authorisation given by, the Minister or the Secretary of State.**]**

Textual Amendments

F27 S. 6(1) substituted by Salmon Act 1986 (c. 62, SIF 52:2), **ss. 33(1)**, 43(4)

F28 Words inserted by Territorial Sea Act 1987 (c. 49, SIF 29:1), s. 3, **Sch. 1 para. 3**

F29 Words repealed by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

F30 S. 6(3)(*c*) and preceding word "or" inserted by Salmon Act 1986 (c. 62, SIF 52:2), **ss. 33(1)**, 43(4)

F31 Words in s. 6(3)(c) repealed (E.W.) (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with Sch. 2 paras. 10, 14(1), 15(1))

F32 S. 6(3)(*d*) and preceding word "or" inserted by Water Act 1989 (c. 15, SIF 130), s. 141, Sch. 17 para. 7(1)(3) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**)

F33 Words in s. 6(3)(d) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 8** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C16 S. 6 excluded by S.I. 1982/1420, **arts. 4**, 6 and by S.I. 1988/1668, **art. 2(1)**

Status: *Point in time view as at 12/01/2010.*
Changes to legislation: *There are currently no known outstanding effects for the Salmon and Freshwater Fisheries Act 1975. (See end of Document for details)*

Marginal Citations

M3 1865 c. 121.

7 Fishing weirs.

(1) No unauthorised fishing weir shall be used for taking or facilitating the taking of salmon or migratory trout.

(2) Where a fishing weir extends more than halfway across any river at its lowest state of water, it shall not be used for the purpose of taking salmon or migratory trout unless it has in it a free gap or opening situated in the deepest part of the river between the points where it is intercepted by the weir, and—

(a) the sides of the gap are in a line with and parallel to the direction of the stream at the weir; and

(b) the bottom of the gap is level with the natural bed of the river above and below the gap; and

(c) the width of the gap in its narrowest part is not less than onetenth part of the width of the river.

(3) A free gap need not be more than 40 feet wide and must not be less than 3 feet wide.

(4) If any person uses a weir in contravention of this section or makes any alteration in the bed of a river in such manner as to reduce the flow of water through a free gap, he shall be guilty of an offence.

(5) In subsection (1) above "unauthorised fishing weir" means any fishing weir which was not lawfully in use on 6th August 1861, by virtue of a grant or charter or immemorial usage.

8 Fishing mill dams.

(1) No unauthorised fishing mill dam shall be used for taking or facilitating the taking of salmon or migratory trout.

(2) A fishing mill dam shall not be used for the purpose of taking salmon or migratory trout unless it has attached to it a fish pass of such form and dimensions as may be approved by **[**[F34]the Agency**]**, and unless the fish pass is maintained in such a condition and has constantly running through it such a flow of water as will enable salmon and migratory trout to pass up and down the pass.

(3) If any person—

(a) uses an unauthorised fishing mill dam as mentioned in subsection (1) above; or

(b) uses or attempts to use a dam in contravention of subsection (2) above,

he shall be guilty of an offence.

(4) If a fishing mill dam has not a fish pass attached to it as required by law, the right of using the fishing mill dam for the purpose of taking fish shall be deemed to have ceased and be for ever forfeited, and the water authority **[**[F35]for the area**]** may remove from it any cage, crib, trap, box, cruive or other obstruction to the free passage of the fish.

(5) In subsection (1) above "unauthorised fishing mill dam" means any fishing mill dam which was not lawfully in use on 6th August 1861, by virtue of a grant or charter or immemorial usage.

Textual Amendments

F34 Words in s. 8(2) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 9** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F35 Words repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

9 Duty to make and maintain fish passes.

(1) Where in any waters frequented by salmon or migratory trout—

(a) a new dam is constructed or an existing dam is raised or otherwise altered so as to create increased obstruction to the passage of salmon or migratory trout, or any other obstruction to the passage of salmon or migratory trout is created, increased or caused; or

(b) a dam which from any cause has been destroyed or taken down to the extent of one-half of its length is rebuilt or reinstated,

the owner or occupier for the time being of the dam or obstruction shall, if so required by notice given by the water authority [F36]. . . and within such reasonable time as may be specified in the notice, make a fish pass for salmon or migratory trout of such form and dimensions as **[**[F37]the Agency**]** may approve as part of the structure of, or in connection with, the dam or obstruction, and shall thereafter maintain it in an efficient state.

(2) If any such owner or occupier fails to make such a fish pass, or to maintain such a fish pass in an efficient state, he shall be guilty of an offence.

(3) The water authority may cause to be done any work required by this section to be done, and for that purpose may enter on the dam or obstruction or any land adjoining it, and may recover the expenses of doing the work in a summary manner from any person in default.

(4) Nothing in this section—

(a) shall authorise the doing of anything that may injuriously affect any public waterworks or navigable river, canal, or inland navigation, or any dock, the supply of water to which is obtained from any navigable river, canal or inland navigation, under any Act of Parliament; or

(b) shall prevent any person from removing a fish pass for the purpose of repairing or altering a dam or other obstruction, provided that the fish pass is restored to its former state of efficiency within a reasonable time; or

(c) shall apply to any alteration of a dam or other obstruction, unless—

(i) the alteration consists of a rebuilding or reinstatement of a dam or other obstruction destroyed or taken down to the extent of one-half of its length, or

(ii) the dam or obstruction as altered causes more obstruction to the passage of salmon or migratory trout than was caused by it as lawfully constructed or maintained at any previous date.

Textual Amendments

F36 Words repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

F37 Words in s. 9(1) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 10** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C17 S. 9 excluded (7.3.1995) by S.I. 1995/519, **art. 3(13)**

C18 S. 9 applied (16.3.1992) by Avon Weir Act 1992 (c. v), **s. 5(5)**.

C19 S. 9 excluded (19.3.2007) by Ouseburn Barrage Order 2007 (S.I. 2007/608), arts. 1, **3(6)** (with arts. 46-48, Sch. 6 para. 23)

10 Power of water authority to construct and alter fish passes.

(1) Any water authority may, [F38]. . .construct and maintain in any dam or in connection with any dam a fish pass of such form and dimensions **[**[F39]as it may determine**]**, so long as no injury is done by such a fish pass to the milling power, or to the supply of water of or to any navigable river, canal or other inland navigation.

(2) Any water authority may, [F40]. . .abolish or alter, or restore to its former state of efficiency, any existing fish pass or free gap, or substitute another fish pass or free gap, provided that no injury is done to the milling power, or to the supply of water of or to any navigable river, canal or other inland navigation.

(3) If any person injures any such new or existing fish pass, he shall pay the expenses incurred by the water authority in repairing the injury, and any such expenses may be recovered by the water authority in a summary manner.

Textual Amendments

F38 Words in s. 10(1) repealed (1.4.1996) by 1995 c. 25, ss. 105, 120(3), Sch. 15 para. 11(1)(a), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F39 Words in s. 10(1) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 11(1)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F40 Words in s. 10(2) repealed (1.4.1996) by 1995 c. 25, ss. 105, 120(3), Sch. 15 para. 11(2), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

11 Minister's consents and approvals for fish passes.

[[F41](1) Any approval given by the Agency to or in relation to a fish pass may, if in giving it the Agency indicates that fact, be provisional until the Agency notifies the applicant for approval that the pass is functioning to its satisfaction.

(1A) The applicant for any such approval—

(a) shall be liable to meet any costs incurred (whether by him or by the Agency or any other person) for the purposes of, or otherwise in connection with, the performance of the Agency's function of determining for the purposes of subsection (1) above whether or not the fish pass in question is functioning to its satisfaction; and

(b) shall provide the Agency with such information or assistance as it may require for the purpose of performing that function.**]**

(2) While any such approval **[**[F42]is provisional, the Agency**]** may, after giving the applicant not less than 90 days' notice of **[**[F43]its intention to do so, revoke the approval**]**.

(3) Where **[**[F44]the Agency**]**revokes a provisional approval given to a fish pass forming part of or in connection with a dam or other obstruction, **[**[F45]it**]** may extend the period within which a fish pass is to be made as part of or in connection with the obstruction.

(4) **[**[F46]The Agency**]** may approve and certify any fish pass if **[**[F47]it**]** is of opinion that it is efficient in all respects and for all purposes, whether it was constructed under this Act or not.

(5) Where a fish pass has received the approval of **[**[F48]the Agency**]**, and the approval has not been revoked, it shall be deemed to be a fish pass in conformity with this Act, notwithstanding that it was not constructed in the manner and by the person specified in this Act.

Textual Amendments

F41 S. 11(1)(1A) substituted for s. 11(1) (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 12(1)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F42 Words in s. 11(2) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 12(2)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F43 Words in s. 11(2) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 12(2)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F44 Words in s. 11(3) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 12(3)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F45 Word in s. 11(3) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 12(3)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F46 Words in s. 11(4) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 12(4)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F47 Word in s. 11(4) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 12(4)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F48 Words in s. 11(5) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 12(5)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

12 Penalty for injuring or obstructing fish pass or free gap.

(1) If any person—

(a) wilfully alters or injures a fish pass; or

(b) does any act whereby salmon or trout are obstructed or liable to be obstructed in using a fish pass or whereby a fish pass is rendered less efficient; or

(c) alters a dam or the bed or banks of the river so as to render a fish pass less efficient; or

(d) uses any contrivance or does any act whereby salmon or trout are in any way liable to be scared, hindered or prevented from passing through a fish pass,

he shall be guilty of an offence, and shall also in every case pay any expenses which may be incurred in restoring the fish pass to its former state of efficiency; and any such expenses may be recovered in a summary manner.

(2) The owner or occupier of a dam shall be deemed to have altered it if it is damaged, destroyed or allowed to fall into a state of disrepair, and if after notice is served on him by the water authority **[**[F49]in whose area the dam is or was situated**]** he fails to repair or reconstruct it within a reasonable time so as to render the fish pass as efficient as before the damage or destruction.

(3) If any person—

(a) does any act for the purpose of preventing salmon or trout from passing through a fish pass, or takes, or attempts to take, any salmon or trout in its passage through a fish pass; or

(b) places any obstruction, uses any contrivance or does any act whereby salmon or trout may be scared, deterred or in any way prevented from freely entering and passing up and down a free gap at all periods of the year,

he shall be guilty of an offence.

(4) This section shall not apply to a temporary bridge or board used for crossing a free gap, and taken away immediately after the person using it has crossed.

Textual Amendments

F49 Words repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

13 Sluices.

(1) Subject to subsection (3) below, unless permission in writing is granted by the water authority **[**[F50]for the area**]**, any sluices for drawing off the water which would otherwise flow over any dam in waters frequented by salmon or migratory trout shall be kept shut on Sundays and at all times when the water is not required for milling purposes, in such manner as to cause the water to flow through any fish pass in or connected with the dam or, if there is no such fish pass, over the dam.

(2) If any person fails to comply with this section, he shall be guilty of an offence.

(3) This section shall not prevent any person opening a sluice for the purpose of letting off water in cases of flood or for milling purposes or when necessary for the purpose of navigation or, subject to previous notice in writing being given to the water authority, for cleaning or repairing the dam or mill or its appurtenances.

Textual Amendments

F50 Words repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

[[F51]14 Screens.

(1) This section applies in any case where—

(a) by means of any conduit or artificial channel, water is diverted from waters frequented by salmon or migratory trout; and

(b) any of the water so diverted is used for the purposes of a water or canal undertaking or for the purposes of any mill or fish farm;

and in this section "the responsible person" means the owner of the water or canal undertaking or (as the case may be) the occupier of the mill or the owner or occupier of the fish farm.

(2) Where this section applies, the responsible person shall, unless an exemption from the obligation is granted by the Agency, ensure (at his own cost) that there is placed and maintained at the entrance of, or within, the conduit or channel a screen which—

(a) subject to subsection (4) below, prevents the descent of the salmon or migratory trout; and

(b) in a case where any of the water diverted is used for the purposes of a fish farm, prevents the egress of farmed fish from the fish farm by way of the conduit or channel.

(3) Where this section applies, the responsible person shall also, unless an exemption from the obligation is granted by the Agency, ensure (at his own cost) that there is placed and maintained across any outfall of the conduit or channel a screen which—

(a) prevents salmon or migratory trout from entering the outfall; and

(b) in a case where any of the water diverted is used for the purposes of a fish farm, prevents the egress of farmed fish from the fish farm by way of the outfall.

(4) Where a screen is placed within any conduit or channel pursuant to subsection (2) above, the responsible person shall ensure that a continuous by-wash is provided immediately upstream of the screen, by means of which salmon or migratory trout may return by as direct a route as practicable to the waters from which they entered the conduit or channel (and accordingly nothing in subsection (2) or (3) above applies in relation to a by-wash provided for the purposes of this subsection).

(5) Any screen placed, or by-wash provided, in pursuance of this section shall be so constructed and located as to ensure, so far as reasonably practicable, that salmon or migratory trout are not injured or damaged by it.

(6) No such screen shall be so placed as to interfere with the passage of boats on any navigable canal.

(7) Any exemption under subsection (2) or (3) above may be granted subject to conditions.

(8) If any person who is required to do so by this section fails to ensure that a screen is placed or maintained, or that a by-wash is provided, in accordance with the provisions of this section, he shall be guilty of an offence.

(9) In any proceedings for an offence under subsection (8) above, it shall, subject to subsection (10) below, be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or a person under his control.

(10) If in any case the defence provided by subsection (9) above involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless—

(a) at least seven clear days before the hearing, and

(b) where he has previously appeared before a court in connection with the alleged offence, within one month of his first such appearance,

he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

(11) Any reference in subsection (10) above to appearing before a court includes a reference to being brought before a court.

(12) The obligations imposed by subsections (2) to (6) above, except so far as relating to farmed fish, shall not be in force during such period (if any) in each year as may be prescribed by byelaw.

(13) The obligations imposed by subsections (2) to (6) above on the occupier of a mill shall apply only where the conduit or channel was constructed on or after 18th July 1923.

(14) Any reference in this section to ensuring that a screen is placed and maintained includes, in a case where the screen takes the form of apparatus the operation of which prevents the passage of fish of the descriptions in question, a reference to ensuring that the apparatus is kept in continuous operation.

(15) In this section "by-wash" means a passage through which water flows.**]**

Textual Amendments

F51 S. 14 substituted (1.1.1999) by 1995 c. 25, s. 105, **Sch. 15 para. 13** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 4**

Modifications etc. (not altering text)

C20 S. 14 extended (1.1.1999) by 1995 c. 25, s. 120(2), **Sch. 23 Pt. I para. 14(5)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 4**
S. 14 modified (1.1.1999) by 1995 c. 25, s. 120(2), **Sch. 23 Pt. I para. 14(6)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 4**

15 Power of water authority to use [F52screens] etc. to limit movements of salmon and trout.

(1) A water authority, F53. . .—

(a) may cause a **[**F52screen**]** or **[**F52screens**]** of such form and dimensions as they may determine to be placed and maintained, at the expense of the authority, at a suitable place in any watercourse, mill race, cut, leat, conduit or other channel for conveying water for any purpose from any waters frequented by salmon or migratory trout; and

(b) may cause any watercourse, mill race, cut, leat, conduit or other channel in which a **[**F52screen**]** is placed under this section to be widened or deepened at the expense of the authority so far as may be necessary to compensate for the diminution of any flow of water caused by the placing of the **[**F52screen**]**, or shall take some other means to prevent the flow of water being prejudicially diminished or otherwise injured.

(2) If any person—

(a) injures any such **[**F52screen**]**; or

(b) removed any such **[**F52screen**]** or part of any such **[**F52screen**]**, except during any period of the year during which under a byelaw **[**F52screens**]** need not be maintained; or

(c) opens any such **[**F52screen**]** improperly; or

(d) permits any such **[**[F52]screen**]** to be injured, or removed, except as aforesaid, or improperly opened;

he shall be guilty of an offence.

(3) A water authority, [F54]. . ., may adopt such means **[**[F55]as in its oppinion are necessary**]** for preventing the ingress of salmon or trout into waters in which they or their spawning beds or ova are, from the nature of the channel or other causes, liable to be destroyed.

(4) Nothing in this section shall—

(a) affect the liability under this Act of any person to place and maintain a **[**[F52]screen**]**; or

(b) authorise a **[**[F52]screen**]** to be so placed or maintained during any period of the year during which under a byelaw **[**[F52]screens**]** need not be maintained; or

(c) authorise any **[**[F52]screen**]** to be placed or maintained so as to obstruct any conduit or channel used for navigation or in any way interfere with the effective working of any mill;

and nothing in subsection (3) above shall authorise the water authority prejudicially to interfere with water rights used or enjoyed for the purposes of manufacturing or for milling purposes or for drainage or navigation.

[[F56](5) In this section "open", in relation to a screen which consists of apparatus, includes the doing of anything which interrupts, or otherwise interferes with, the operation of the apparatus.**]**

Textual Amendments

F52 Word in s. 15 substituted (1.1.1999) by 1995 c. 25, s. 105, **Sch. 15 para. 14(1)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 4**

F53 Words in s. 15(1) repealed (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 14(2)**(with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F54 Words in s. 15(3) repealed (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 14(3)(a)**(with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F55 Words in s. 15(3) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 14(3)(b)**(with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F56 S. 15(5) added (1.1.1999) by 1995 c. 25, s. 105, **Sch. 15 para. 14(4)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 4**

16 Boxes and cribs in weirs and dams.

(1) Any person who uses a fishing weir or fishing mill dam for the taking of salmon or migratory trout by means of boxes or cribs shall be guilty of an offence unless the boxes or cribs satisfy the requirements specified in subsection (2) below.

(2) The requirements mentioned in subsection (1) above are—

(a) the upper surface of the sill of the box or crib must be level with the bed of the river;

(b) the bars or inscales of the heck or upstream side of the box or crib—

(i) must not be nearer to each other than 2 inches;

(ii) must be capable of being removed; and

(iii) must be placed perpendicularly;

(c) there must not be attached to any such box or crib any spur or tail wall, leader or outrigger of a greater length than 20 feet from the upper or lower side of the box or crib.

17 Restrictions on taking salmon or trout above or below an obstruction or in mill races.

(1) Any person who takes or kills, or attempts to take or kill, except with rod and line, or scares or disturbs any salmon or trout—

(a) at any place above or below any dam or any obstruction, whether artificial or natural, which hinders or retards the passage of salmon or trout, being within 50 yards above or 100 yards below the dam or obstruction, or within such other distance from the dam or obstruction as may be prescribed by byelaw; or

(b) in any waters under or adjacent to any mill, or in the head race or tail race of any mill, or in any waste race or pool communicating with a mill; or

(c) in any artificial channel connected with any such dam or obstruction,

shall be guilty of an offence.

(2) Nothing in this section shall apply to any legal fishing mill dam not having a crib, box or cruive, or to any fishing box, coop, apparatus, net or mode of fishing in connection with and forming part of such a dam or obstruction for purposes of fishing.

(3) Where a fish pass

[[F57](a) approved by the Agency, or

(b) constructed and maintained by the Agency in accordance with section 10(1) above,**]**

is for the time being attached to a dam or obstruction, this section shall not be enforced in respect of the dam or obstruction until compensation has been made by the water authority to the persons entitled to fish in the waters for that right of fishery.

Textual Amendments

F57 S. 17(3)(a)(b) substituted for words (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 15** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

18 Provisons supplementary to Part II.

(1) If any person obstructs a person legally authorised whilst he is doing any act authorised by section 9, 10 or 15 above, he shall be guilty of an offence.

[[F58](2) The Agency shall not—

(a) construct, abolish or alter any fish pass, or abolish or alter any free gap, in pursuance of section 10 above, or

(b) do any work under section 15 above,

unless reasonable notice of its intention to do so (specifying the section in question) has been served on the owner and occupier of the dam, fish pass or free gap, watercourse, mill race, cut, leat, conduit or other channel, with a plan and specification of the proposed work; and the Agency shall take into consideration any objections by the owner or occupier, before doing the proposed work.**]**

(3) If any injury is caused—

(a) to any dam by reason of the construction, abolition or alteration of a fish pass or the abolition or alteration of a free gap in pursuance of section 10 above; or

(b) by anything done by the water authority under section 15 above,

any person sustaining any loss as a result may recover from the water authority compensation for the injury sustained.

(4) The amount of any compensation under section 10, 15 or 17 above shall be settled in case of dispute by a single arbitrator appointed by the Minister.

(5) In any case in which a water authority are liable to pay compensation under this Part of this Act in respect of injury or damage caused by the making or maintaining of any work, compensation shall not be recoverable unless proceedings for its recovery are instituted within two years from the completion of the work.

Textual Amendments

F58 S. 18(2) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 16** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**.

Modifications etc. (not altering text)

C21 S. 18(2) extended (1.4.1996) by 1995 c. 25, s. 120(2), **Sch. 23 para. 14(7)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

PART III

TIMES OF FISHING AND SELLING AND EXPORTING FISH

F59 19 Close seasons and close times.

. . . . . .

Textual Amendments

F59 Ss. 19-22 repealed (12.1.2010 except for the omission of s. 20) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), Sch. 16 para. 8, **22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 15(c), 27(b)

Modifications etc. (not altering text)

C22 S. 19 amended by Fisheries Act 1981 (c. 29, SIF 52:1), s. 33(1), **Sch. 4 Pt. I para. 4**

20 Close seasons and close times—fixed engines and obstructions.

(1) Subject to subsections (4) and (5) below, immediately after the commencement of the annual close season and the weekly close time, the occupier of any fixed engine for taking salmon or migratory trout shall cause it to be removed or rendered incapable of taking them or obstructing their passage.

(2) Subject to subsections (4) and (5) below, where in pursuance of subsection (1) above a fixed engine has been rendered incapable (whether by removal or otherwise) of taking salmon or migratory trout or obstructing their passage, its occupier shall not replace

it or otherwise render it capable of taking them or obstructing their passage until the end of the close season or close time.

(3) If any person—

(a) fails to comply with subsection (1) or (2) above; or

(b) during the annual close season or weekly close time places any obstruction, uses any contrivance or does any act, for the purpose of deterring salmon or migratory trout from passing up a river,

he shall be guilty of an offence.

(4) Subsections (1) to (3) above only apply to putts and putchers in relation to the close season for putts and putchers.

(5) It shall be a defence for a person charged with an offence under subsection (3)(b) above to show that he placed the obstruction, used the contrivance or did the acts in question in the course of legally fishing for fish other than salmon or migratory trout.

(6) In this section "migratory trout" does not include rainbow trout.

[F59]21 Eel baskets etc.

. . . . . .

Textual Amendments

F59 Ss. 19-22 repealed (12.1.2010 except for the omission of s. 20) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), Sch. 16 para. 8, **22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 15(c), 27(b)

[F59]22 Sale of salmon and trout.

. . . . . .

Textual Amendments

F59 Ss. 19-22 repealed (12.1.2010 except for the omission of s. 20) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), Sch. 16 para. 8, **22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 15(c), 27(b)

[F60]23 Export of salmon and trout.

. . . . . .

Textual Amendments

F60 S. 23 repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 233(2)(b), 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 16, 27(b)

[F61]24 Consignment of salmon and trout.

. . . . . .

Textual Amendments

F61 S. 24 repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 233(2)(c), 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 16, 27(b)

PART IV

FISHING LICENCES

25 Licences to fish.

[[F62](1) The Agency shall by means of a system of licensing regulate fishing by licensable means of fishing for—

(a) salmon, trout, eels, lampreys, smelt and freshwater fish; and

(b) fish of such other description as may be specified for the purposes of this section by order under section 40A below.

(1A) In this Act " licensable means of fishing " means any of the following—

(a) rod and line;

(b) an historic installation;

(c) such other means of fishing as the appropriate national authority may by order specify.

(1B) In this Act " historic installation " means any of the following—

(a) a fixed engine certified in pursuance of the Salmon Fishery Act 1865 to be a privileged fixed engine;

(b) a fixed engine which was in use for taking salmon or migratory trout during the open season of 1861, in pursuance of an ancient right or mode of fishing as lawfully exercised during that open season, by virtue of any grant or charter or immemorial usage;

(c) a fishing weir or fishing mill dam which was lawfully in use on 6th August 1861 by virtue of a grant or charter or immemorial usage.**]**

(2) Subject to the following provisions of this section, a licence granted for the purposes of this section (hereafter in this Act referred to as a "fishing licence") shall entitle the person to whom it was granted and no others to use an instrument specified in the licence to fish for any fish **[**[F63]of a description, in an area and for a period**][**[F63]of such a description, in such area or areas and for such period as is**]** so specified.

(3) A fishing licence for the use of an instrument other than a rod and line to fish for salmon or trout shall also authorise the use of the instrument for that purpose by the duly authorised servants or agents of the person to whom it was granted, but **[**[F64]not exceeding the number permitted by paragraph 13 of Schedule 2 to this Act**][**[F64]subject to the provisions of paragraphs 9 to 13 of Schedule 2 to this Act**]**.

(4) A fishing licence for the use of a rod and line shall entitle the licensee to use as ancillary to that use a [F65]... landing net.

[F66](5) . . . . . .

[F67](6) . . . . . .

(7) Any person or association entitled to an exclusive right of fishing in any inland waters may be granted a general licence to fish in those waters subject to any conditions agreed between the water authority and the licensee, and the licence shall entitle the licensee and, subject to paragraph 9 of Schedule 4 below, any person authorised by him in writing, or in the case of an association, by its secretary so to fish.

(8) Schedule 2 to this Act shall have effect with respect to fishing licences.

(9) Any licence in force under any provision of section 61 of the [M4]Salmon and Freshwater Fisheries Act 1923 immediately before 29th June 1972 shall be treated as having been granted under the corresponding provision of this section.

Textual Amendments

F62 S. 25(1)-(1B) substituted for s. 25(1) (12.11.2009 for specified purposes, 12.1.2010 for specified purposes) by Marine and Coastal Access Act 2009 (c. 23), **ss. 217(1)**, 324(1)(c), 324(1)(d); S.I. 2009/3345, art. 2, Sch. para. 11

F63 Words "of such a description, in such area or areas and for such period as is" substituted for "of a description, in an area and for a period" (E.W.) by Water Act 1989 (c.15, SIF 130), s. 141, **Sch. 17 para. 7(1)(5)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

F64 Words beginning "subject to the provisions" substituted for words beginning "not exceeding" (E.W. and as mentioned in s. 43(4) of the amending act (border rivers)) by Salmon Act 1986 (c. 62, SIF 52:2), **ss. 33(1)**, 43(4)

F65 Words in s. 25(4) repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 217(3), 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 11, 27(b)

F66 S. 25(5) repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 217(4), 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 11, 27(b)

F67 S. 25(6) repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 217(4), 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 11, 27(b)

Marginal Citations

M4 1923 c. 16.

26 Limitation of fishing licences.

(1) A water authority may **[**[F68]in relation to any such area or areas as are specified in the order,**]** by order confirmed by the Minister—

(a) limit for a period not exceeding ten years from the coming into operation of the order the number of fishing licences to be issued in any year for fishing in **[**[F69]any part of their area**][**[F69]that area or those areas**]** for salmon or trout other than rainbow trout with any instrument so specified other than rod and line; and

(b) provide for the selection of the applicants to whom such licences are to be issued where the number of applications exceeds the number of licences which may be granted.

[[F70](1A) The Agency may only make an order under subsection (1) above in relation to licences for fishing for fish of any description if it is satisfied that it is necessary to do so for the purposes of—

(a) maintaining, improving or developing fisheries of any fish referred to in section 25(1) above; or

(b) protecting the marine or aquatic environment from significant harm.

(1B) The Agency may not make an order under subsection (1) above in relation to licences for fishing for fish by—

(a) rod and line; or

(b) an historic installation.**]**

(2) Where the Minister proposes to confirm an order under this section, he shall require the water authority to publish the order and notice of his intention to confirm it in such manner as he may require, together with a notification that within a period specified in the requirement written objections to the order may be made to him.

(3) The Minister shall consider any such objections received by him within the said period, and—

(a) if the number of licences as proposed to be limited by the order is less than the number of licences issued in any of the three years preceding the year in which the order is to come into operation; and

(b) any such objection is made by any person who has during each of the two years preceding that year held a licence of the same description as the licences which it is proposed so to limit in number;

he shall cause a local inquiry to be held before confirming the order.

(4) Subject to subsection (5) below, the Minister shall not confirm an order under this section unless he is satisfied that the terms of the order relating to the selection of applicants for licences are such as to secure that any person who during the year preceding that year held a fishing licence to use an instrument of any description and who is dependent on fishing for his livelihood will be able to obtain a fishing licence to use an instrument of that description.

(5) If it appears to the Minister that the operation of subsection (4) above would be detrimental to the conservation of any fishery, he may direct that the subsection shall in its application to that fishery have effect with the substitution for the words "the year" of the words "the two years" or, if in his opinion special circumstances justify it, "the three years".

(6) The Minister may with the consent of the water authority vary an order submitted to him under this section before confirming it and may require the water authority to publish the terms of the proposed variation in such manner, if any, as he may specify in the requirement.

(7) An order under this section may be revoked by the Minister, or by an order made by the water authority and confirmed by the Minister.

[[F71](8) Any order limiting the number of licences in force in a water authority area under section 62 of the [M5]Salmon and Freshwater Fisheries Act 1923 immediately before 29th June 1972 shall be treated as having limited the number of licences in that area for a period of ten years from that date.**]**

Textual Amendments

F68 Words inserted (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 141, **Sch. 17 para. 7(1)**(6(a) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

F69 Words "that area or those areas" substituted for "any part of their area" (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 141, **Sch. 17 para. 7(1)(6)(b)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

F70 S. 26(1A)(1B) inserted (12.11.2009 for specified purposes, 1.1.2011 in so far as not already in force) by Marine and Coastal Access Act 2009 (c. 23), **ss. 218(3)**, 324(1)(c), 324(1)(d); S.I. 2010/298, art. 2, Sch. para. 13

F71 S. 26(8) repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

Marginal Citations

M5 1923 c. 16.

27 Unlicensed fishing.

A person is guilty of an offence if, in any place in which fishing for fish of any description is regulated by a system of licensing, he—

(a) fishes for or takes fish of that description otherwise than by means of an instrument which he is entitled to use for that purpose by virtue of a fishing licence or otherwise than in accordance with the conditions of the licence; or

(b) has in his possession with intent to use it for that purpose an instrument other than one which he is authorised to use for that purpose by virtue of such a licence.

Modifications etc. (not altering text)

C23 S. 27 amended by Fisheries Act 1981 (c. 29, SIF 52:1), s. 33(1), **Sch. 4 Pt. I para. 5**

C24 S. 27 excluded (30.6.1999) by S.I. 1999/1746, **arts. 1(1)**, 6(3) (with art. 2); S.I. 1998/3178, **art. 3**

PART V

ADMINISTRATION AND ENFORCEMENT

Regulation of fisheries etc.

28 General powers and duties of water authorities and Minister.

F72(1) . . . . . .

F72(2) . . . . . .

F72(2A) . . . . . .

F72(3) . . . . . .

F73(4) . . . . . .

F73(5) . . . . . .

F73(6) . . . . . .

F73(7) . . . . . .

[F73](8) . . . . . .

Textual Amendments

F72 S. 28(1)–(2A) repealed by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

F73 S. 28(3)-(8) repealed (E.W.) (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with Sch. 2 paras. 10, 14(1), 15(1))

29 Fish rearing licences.

(1) The Minister may grant a licence to carry on the business of artificially propagating or rearing salmon or trout in any waters.

(2) Any such licence may be granted subject to such conditions (if any) as the Minister thinks fit, and may be revoked if he is of opinion that any condition has not been observed.

30 Introduction of fish into inland waters.

A person shall be guilty of an offence if he introduces any fish or spawn of fish into an inland water, or has in his possession any fish or spawn of fish intending to introduce it into an inland water, unless he first obtains the written consent of the water authority **[**[F74]within whose area any part of that water is situated**][**[F75]or the inland water is one which consists exclusively of, or of part of, a fish farm and which, if it discharges into another inland water, does so only through a conduit constructed or adapted for the purpose.

[F76] . . . . . .**]**

Textual Amendments

F74 Words repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

F75 Words added (E.W. and as mentioned in s. 43(4) of the amending act (border rivers)) by Salmon Act 1986 (c. 62, SIF 52:2), **ss. 34**, 43(4)

F76 S. 30: paragraph defining "fish farm"repealed and superseded (1.1.1999) by 1995 c. 25, ss. 105, 120(3), Sch. 15 para. 17, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 4**

Powers of water bailiffs etc.

31 Powers of search etc.

(1) Any water bailiff appointed by a water authority and any person appointed by the Minister—

(a) may examine any dam, fishing weir, fishing mill dam, fixed engine or obstruction, or any artificial watercourse, and for that purpose enter on any land;

(b) may examine any instrument or bait which he has reasonable cause to suspect of having been or being used or likely to be used in taking fish [F77]... or any container which he has reasonable cause to suspect of having been or being used or likely to be used for holding any such instrument, bait or fish;

(c) may stop and search any boat or other vessel used in fishing in a water authority area or any vessel or vehicle which he has reasonable cause to suspect of containing—

(i) fish [F78]...;

(ii) any such instrument, bait or container as aforesaid;

(d) may seize any fish**[**[F79] (or a sample of any fish) **]** and any instrument, vessel, vehicle or other thing liable to be forfeited in pursuance of this Act.

[[F80](e) may disable or destroy any dam, fishing weir, fishing mill dam or fixed engine which he has reasonable cause to suspect of having operated or been used, or of being likely to be used, in contravention of this Act.**]**

(2) If any person refuses to allow a water bailiff or a person appointed by the Minister to make any entry, search or examination which he is by this section authorised to make, or to seize anything which he is so authorised to seize, or resists or obstructs a water bailiff or person so appointed in any such entry, search, examination or seizure, he shall be guilty of an offence.

Textual Amendments

F77 Words in s. 31(1)(b) repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 220(2)(a), 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 12, 27(b)

F78 Words in s. 31(1)(c)(i) repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 220(2)(b), 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 12, 27(b)

F79 Words in s. 31(1)(d) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 220(2)(c)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 12

F80 S. 31(1)(e) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 220(2)(d)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 12

Modifications etc. (not altering text)

C25 S. 31(1) extended (30.6.1999) by S.I. 1999/1746, **arts. 1(1)**, 8(1) (with art. 2)

C26 By Salmon Act 1986 (c. 62, SIF 52:2), **ss. 32(6)**(*a*), 43(4) it is provided that s. 31(1)(*b*)(*c*) is amended (E.W. and as mentioned in the said s. 43(4) (border rivers))

C27 S. 31(2) excluded (30.6.1999) by S.I. 1999/1746, **arts. 1(1)**, 8(9) (with art. 2); S.I. 1998/3178, **art. 3**

32 Power to enter lands.

(1) Subject to subsection (2) below,—

(a) any water bailiff or other officer of a water authority, under a special order in writing from the authority, and

(b) any person appointed by the Minister, under an order in writing from him,

may at all reasonable times, for the purpose of preventing any offence against this Act, enter, remain upon and traverse any lands adjoining or near to **[**[F81]waters within a water authority area**][**[F81]any waters**]** other than—

(i) a dwelling-house or the curtilage of a dwelling-house, [F82]...

[F82](ii) . . . . . .

(2) An order under subsection (1) above shall not remain in force for more than 12 months.

Textual Amendments

F81 Words "any waters" substituted for "waters within a water authority area" (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 141, **Sch. 17 para. 7(1)(8)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

F82 S. 32(1)(ii) repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 220(3), 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 12, 27(b)

Modifications etc. (not altering text)

C28 S. 32 extended (30.6.1999) by S.I. 1999/1746, **arts. 1(1)**, 8(1) (with art. 2); S.I. 1998/3178, **art. 3**

33 Orders and warrants to enter suspected premises.

(1) Where from a statement on oath of a water bailiff or any other officer of a water authority, or any person appointed by the Minister, it appears to any justice of the peace that the person making the statement has good reason to suspect that any offence against this Act is being or is likely to be committed on any land situate on or near to any waters, the justice may by order under his hand authorise him, during a period not exceeding 24 hours to be specified in the order, to enter upon and remain on the land during any hours of the day or night for the purpose of detecting the persons committing the offence.

(2) Any justice of the peace upon an information on oath that there is probable cause to suspect any offence against this Act to have been committed on any premises, or **[**[F83] or an offence against this Act to have been committed in the taking of any fish **]**, or any illegal nets or other instruments to be on any premises, by warrant under his hand and seal may authorise any water bailiff or other officer of a water authority, or any person appointed by the Minister, or any constable, to enter the premises for the purposes of detecting the offence or the fish, nets or other instruments, at such times of the day or night as are mentioned in the warrant, and to

[[F84](a) seize any illegal net or other instrument, or any net or other instrument suspected to have been illegally used, that may be found on the premises;

(b) seize any fish suspected to have been illegally taken or sold that may be found on the premises; or

(c) disable or destroy any dam, fishing weir, fishing mill dam or fixed engine suspected to have operated or been used illegally that may be found on the premises.**]**

(3) A warrant under subsection (2) above shall not continue in force for more than **[**[F85] three months **]**.

Textual Amendments

F83 Words in s. 33(2) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 12**; S.I. 2009/3345, art. 2, Sch. para. 15(d)

F84 S. 33(2)(a)-(c) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 220(4)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 12

F85 Words in s. 33(3) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 220(5)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 12

Modifications etc. (not altering text)

C29 S. 33 extended (30.6.1999) by S.I. 1999/1746, **arts. 1(1)**, 8(1) (with art. 2); S.I. 1998/3178, **art. 3**

C30 By Salmon Act 1986 (c. 62, SIF 52:2), **ss. 32(6)**(*b*), 43(4) it is provided that s. 33(2) is amended (E.W. and as mentioned in the said s. 43(4) (border rivers))

34 Power to apprehend persons fishing illegally [F86]....

If any person, [F87]..., **[**[F88] takes or kills any fish where the taking or killing constitutes an offence under this Act, or is found on or near any waters with intent to take or kill any fish where the taking or killing would constitute an offence under this Act, or having an instrument prohibited by this Act in his possession for the capture of any fish, where the capture would constitute an offence under this Act **]**, a water bailiff or a person appointed by the Minister, with any assistants, may seize him without warrant and put him as soon as may be into the custody of a police officer.

Textual Amendments

F86 Words in heading repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 220(6)(a), 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 12, 27(b)

F87 Words in s. 34 repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 220(6)(b), 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 12, 27(b)

F88 Words in s. 34 substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 13**; S.I. 2009/3345, art. 2, Sch. para. 15(d)

Modifications etc. (not altering text)

C31 S. 34 extended (30.6.1999) by S.I. 1999/1746, **arts. 1(1)**, 8(1) (with art. 2); S.I. 1998/3178, **art. 3**

35 Power to require production of fishing licences.

(1) **[**[F89]A water bailiff or other officer of the agency, or any constable**]**, may require any person who is fishing, or whom he reasonably suspects of **[**[F90] intending to **]** fish or **[**[F91] of having recently **]** fished **[**[F92]in a water authority area**]**[[F92]in any area**]**,[[F93] in circumstances where the fishing would require a licence or authorisation under this Act or a licence under section 16 of the Wildlife and Countryside Act 1981, **]** to produce his licence or other authority to fish and to state his name and address.

[[F94](1A) Without prejudice to subsection (1) above, a water bailiff or other officer of the Agency who on any occasion finds a person who he has reason to believe is committing, or has on that occasion committed, a fixed penalty offence, within the meaning of section 37A below, may require that person to state his name and address.**]**

[F95](2) . . . . . .

(3) If any person required to produce his fishing licence or other authority or to state his name and address fails to do so, he shall be guilty of an offence; but if within seven days after the production of his licence was so required he produces the licence or other authority at **[**[F96]the office of the water authority**]**[[F96]the appropriate office of **[**[F97]the Agency**]]** he shall not be convicted of an offence under this section for failing to produce it.

[[F98](4) In subsection (3) above, “ the appropriate office of the Agency ” means—

(a) in a case where the person requiring the production of the licence or other authority specifies a particular office of the Agency for its production, that office; and

(b) in any other case, any office of the Agency;

and for the purposes of that subsection where a licence or other authority which any person has been required to produce is sent by post to an office of the Agency that licence or other authority shall be treated as produced by that person at that office.**]**

Textual Amendments

F89 Words in s. 35(1) substituted (1.4.1996) by 1995 c. 25, **s. 104(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F90 Words in s. 35(1) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 220(7)(a)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 12

F91 Words in s. 35(1) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 220(7)(b)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 12

F92 Words "in any area" substituted for "in a water authority area" (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 141, **Sch. 17 para. 7(1)(9)(a)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

F93 Words in s. 35(1) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 220(7)(c)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 12

F94 S. 35(1A) inserted (1.4.1996) by 1995 c. 25, **s. 104(3)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F95 S. 35(2) repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 220(8), 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 12, 27(b)

F96 Words "the appropriate office of the National Rivers Authority" substituted for "the office of the water authority" (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 141, **Sch. 17 para. 7(1)(9)(c)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

F97 Words in s. 35(3) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 18(1)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F98 S. 35(4) substituted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 18(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C32 S. 35 excluded (30.6.1999) by S.I. 1999/1746, **arts. 1(1)**, 8(9) (with art. 2); S.I. 1998/3178, **art. 3**

36 Provisions supplementary to sections 31 to 35.

(1) A water bailiff and a person appointed by the Minister shall be deemed to be a constable for the purpose of the enforcement of this Act, or any order or byelaw under it, and to have all the same powers and privileges, and be subject to the same liabilities as a constable duly appointed has or is subject to by virtue of the common law or of any statute.

(2) The production by a water bailiff or a person appointed by the Minister of evidence of his appointment shall be a sufficient warrant for him exercising the powers conferred on him by this Act.

(3) A police constable whose services are provided under paragraph 39(1)(*c*) of Schedule 3 below shall have all the powers and privileges of a water bailiff.

Modifications etc. (not altering text)

C33 S. 36 extended (30.6.1999) by S.I. 1999/1746, **arts. 1(1)**, 8(1) (with art. 2); S.I. 1998/3178, **art. 3**

C34 By Salmon Act 1986 (c. 62, SIF 52:2), **ss. 32(6)(b)**, 43(4) it is provided that s. 36(1) is amended (E.W. and as mentioned in the said s. 43(4) (border rivers))

Offences

37 Prosecution etc. of offences.

Parts I and II of Schedule 4 to this Act shall have effect with regard to the prosecution and punishment of offences against this Act and the procedure on such prosecutions.

[F99 37A Fixed penalty notices for certain offences.

(1) Where on any occasion a water bailiff or other officer of the Agency finds a person who he has reason to believe is committing, or has on that occasion committed, a fixed penalty offence, he may give to that person a notice (in this section referred to as a "fixed penalty notice") offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

(2) Where a person is given a fixed penalty notice in respect of a fixed penalty offence—
   (a) no proceedings shall be instituted for that offence before the expiration of the period for paying the fixed penalty; and
   (b) he shall not be convicted of that offence if the fixed penalty is paid before the expiration of that period.

(3) The Agency may extend the period for paying the fixed penalty in any particular case if it considers it appropriate to do so in all the circumstances of the case.

(4) If, in any particular case, the Agency considers that a fixed penalty notice which has been given ought not to have been given, it may give to the person to whom the fixed penalty notice was given a notice withdrawing the fixed penalty notice; and where notice under this subsection is given—
   (a) the Agency shall repay any amount which has been paid by way of fixed penalty in pursuance of the fixed penalty notice; and
   (b) no proceedings shall be instituted or continued against that person for the offence in question.

(5) The amount by which the sums received by the Agency by way of fixed penalties exceed the sums repaid by it under subsection (4)(a) above shall be paid into the Consolidated Fund.

(6) In any proceedings, a certificate purporting to be signed by or on behalf of the Chief Executive of the Agency and stating either—
   (a) that payment of a fixed penalty was, or (as the case may be) was not, received by the Agency on or before a date specified in the certificate, or
   (b) that an envelope containing an amount sent by post in payment of a fixed penalty was marked as posted on a date specified in the certificate,

   shall be received as evidence of the matters so stated and shall be treated, without further proof, as being so signed unless the contrary is shown.

(7) A fixed penalty notice shall give such reasonable particulars of the circumstances alleged to constitute the fixed penalty offence to which the notice relates as are necessary for giving reasonable information of the offence and shall state—

(a) the monetary amount of the fixed penalty which may be paid;

(b) the person to whom and the address at which—

(i) the fixed penalty may be paid, and

(ii) any correspondence relating to the fixed penalty notice may be sent;

(c) the method or methods by which payment of the fixed penalty may be made;

(d) the period for paying the fixed penalty;

(e) the consequences of the fixed penalty not being paid before the expiration of that period.

(8) A fixed penalty notice may also contain such other information relating to, or for the purpose of facilitating, the administration of the fixed penalty system as the Agency considers necessary or desirable.

(9) Regulations may—

(a) make provision with respect to the giving of fixed penalty notices, including, in particular, provision with respect to—

(i) the methods by which,

(ii) the officers, servants or agents by, to or on whom, and

(iii) the places at which,

fixed penalty notices may be given by, or served on behalf of, a water bailiff or other officer of the Agency;

(b) prescribe the method or methods by which fixed penalties may be paid;

(c) make provision for or with respect to the issue of prescribed documents to persons to whom fixed penalty notices are or have been given.

(10) In this section—

"fixed penalty" means a penalty of such amount as may be prescribed (whether by being specified in, or made calculable under, regulations);

"fixed penalty offence" means, subject to subsection (11) below, any offence—

(a) under this Act,

(b) under the [M6]Salmon Act 1986,

(c) under or by virtue of regulations or orders made under section 115, 116 or 142 of the [M7]Water Resources Act 1991, or

(d) under section 211(3) of that Act, so far as relating to byelaws made by virtue of paragraph 6 of Schedule 25 to that Act,

which is for the time being prescribed for the purpose;

"the fixed penalty system" means the system implementing this section and regulations made under it;

"the Ministers" means the Secretary of State and the Minister;

"notice" means notice in writing;

"the period for paying", in relation to any fixed penalty, means such period as may be prescribed for the purpose;

"prescribed" means prescribed by regulations;

"regulations" means regulations made under this section by the Ministers.

(11) The provision that may be made by regulations prescribing fixed penalty offences includes provision for an offence to be a fixed penalty offence—

(a) only if it is committed in such circumstances or manner as may be prescribed; or

(b) except if it is committed in such circumstances or manner as may be prescribed.

(12) Regulations may provide for any offence which is a fixed penalty offence to cease to be such an offence.

(13) An offence which, in consequence of regulations made by virtue of subsection (12) above, has ceased to be a fixed penalty offence shall be eligible to be prescribed as such an offence again.

(14) Regulations may—

(a) make different provision in relation to different cases or classes of case; or

(b) provide for such exceptions, limitations and conditions, or make such incidental, supplemental, consequential or transitional provision, as the Ministers consider necessary or expedient.

(15) Any power to make regulations under this section shall be exercisable by statutory instrument made by the Ministers; and a statutory instrument containing any such regulations shall be subject to annulment pursuant to a resolution of either House of Parliament.**]**

Textual Amendments

F99 S. 37A inserted (1.4.1996) by 1995 c. 25, **s. 104(1)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Marginal Citations

M6 1986 c. 62.

M7 1991 c. 57.

PART VI

MISCELLANEOUS AND SUPPLEMENTARY

38 Works below high water mark.

(1) Any works proposed to be constructed under this Act on, over or under tidal lands below high-water mark of ordinary spring tides shall be constructed only in accordance with such plans and sections and subject to such restrictions and regulations as the Secretary of State approves in writing before they are commenced.

(2) Any alteration or extension of any such works shall be subject to the like approval.

(3) If any such work is commenced or completed contrary to this section, the Secretary of State may abate and remove it and restore its site to its former condition at the cost of the person who commenced or executed it, or (if he is not the owner of the work) of the owner, and the cost shall be summarily recoverable by the Secretary of State.

(4) This section is in addition to and not in derogation of any local Act.

Modifications etc. (not altering text)

C35 S. 38 applied (1.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 181(3)**, 225(2), (with ss. 16(6), 179, 222(3), 224(1), 225(4), Sch. 22 paras. 1, 2, 4, Sch. 23 para. 6).

39 Border rivers and Solway Firth.

(1) This Act—

(a) does not apply to the River Tweed, but

(b) applies to so much of the River Esk, with its banks and tributary streams up to their source, as is situated in Scotland,

and in this subsection "the River Tweed" **[**[F100]means the Tweed district (as defined in article 2(1) of the Scotland Act 1998 (River Tweed) Order 2006 (S.I. 2006/2913)).**]**

[[F101](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 [M8] 1951 as applied to that River by section 21 of that Act. **]**

[[F102](1B) Sections 31 to 34 and 36(2) of this Act shall, subject to the modifications set out in subsection (1C) below, apply throughout the catchment area of the River Esk in Scotland but a water bailiff shall exercise his powers under those sections as so applied only in relation to an offence—

(a) against this Act;

(b) against section 1 of the [M9] Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951; or

(c) which is deemed to be an offence under this Act by virtue of section 211(6) of the [M10] Water Resources Act 1991,

which he has reasonable cause to suspect has been committed in a place to which this Act applies by virtue of subsection (1)(b) above.

(1C) The modifications referred to in subsection (1B) above are—

(a) references in sections 31 to 34 of this Act to " this Act " shall be construed as including references to section 1 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (as applied to the River Esk by section 21 of that Act); and

(b) in section 33—

(i) references to a justice of the peace shall be construed as including references to a sheriff; and

(ii) in subsection (2), the reference to an information on oath shall be construed as including a reference to evidence on oath.**]**

(2) Where the minimum size of mesh of nets used for taking salmon prescribed by any provision of this Act or by any byelaw in force in any part of the Solway Firth within England is greater than that which may be lawfully used in the part of the Solway Firth within Scotland, the provision or byelaw shall have effect as if the minimum size of mesh so prescribed in relation to the part of the Solway Firth within England were such as may be so lawfully used as aforesaid in the part of the Solway Firth within Scotland.

(3) The limits of the Solway Firth for the purposes of this section shall be determined by the Minister.

(4) . . . . . [F103]

[[F104](5) Nothing in this section **[**[F105]the Water Resources Act 1991**][**[F106]or the Water Act 1989**]** shall authorise a water authority to take legal proceedings in Scotland in respect of an offence against this Act.**]**

Textual Amendments

F100 Words in s. 39(1) substituted (15.11.2006) by Scotland Act 1998 (River Tweed) Order 2006 (S.I. 2006/2913), art. 1(2), **Sch. 4 para. 2**

F101 S. 39(1A) inserted by Salmon Act 1986 (c. 62, SIF 52:2), **s. 26(2)**

F102 S. 39(1B)(1C) inserted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 19** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F103 S. 39(4) repealed by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

F104 S. 39(5) added by Salmon Act 1986 (c. 62, SIF 52:2), s. 41, **Sch. 4 para. 13**

F105 S. 39(5): By Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2, 4(2), **Sch. 1 para. 30(3)** it is provided that after the words "this section" there is substituted (E.W.) (1.12.1991) the words "the Water Resources Act 1991"

F106 Words inserted by Water Act 1989 (c. 15, SIF 130), s. 141, **Sch. 17 para. 7(1)(10)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

Modifications etc. (not altering text)

C36 By Salmon Act 1986 (c. 62, SIF 52:2), **ss. 32(6)**(*b*), 43(4) it is provided that s. 39(1) is amended (E.W. and as mentioned in the said s. 43(4) (border rivers))

Marginal Citations

M8 1951 c.26**(52:2).**

M9 1951 c. 26.

M10 1991 c. 57.

40 River Severn.

This Act applies to the dams constructed by the Severn Commissioners under the [M11]Severn Navigation Act 1842 and the [M12]Severn Navigation Act 1853 and now vested in the British Waterways Board, and to all fish passes in those dams; and it shall accordingly be the Board's duty, subject to the provisions of this Act and to section 23 of the [M13]Severn Navigation Act 1881 (by virtue of which they have power to stop up the passes with the agreement of the water authority for the area) to maintain those passes in an efficient state.

Marginal Citations

M11 1842 c. xxiv (Sess. 2).

M12 1853 c. xlvii.

M13 1881 c. ccv.

[F107 40A Power to specify fish

The appropriate national authority may by order specify fish of any description for the purposes of any or all of the following—

(a) section 1, 2, 25 or 27A above;

(b) section 32 of the Salmon Act 1986;

(c) paragraph 6 of Schedule 25 to the Water Resources Act 1991;

(d) section 6(6) of the Environment Act 1995.**]**

Textual Amendments

F107 S. 40A inserted (12.11.2009 for specified purposes, 12.1.2010 in so far as not already in force) by Marine and Coastal Access Act 2009 (c. 23), **ss. 221(1)**, 324(1)(c), 324(1)(d); S.I. 2009/3345, art. 2, Sch. para. 12

[F108 40B Orders: supplementary

(1) An order under section 1, 25 or 40A above may make different provision for different purposes (and, in particular, different provision in relation to different areas or waters).

(2) Such an order is to be made by statutory instrument.

(3) A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of—

(a) either House of Parliament, in the case of an order made by the Secretary of State;

(b) the National Assembly for Wales, in the case of an order made by the Welsh Ministers.**]**

Textual Amendments

F108 S. 40B inserted (12.11.2009 for specified purposes, 12.1.2010 in so far as not already in force) by Marine and Coastal Access Act 2009 (c. 23), **ss. 222**, 324(1)(c), 324(1)(d); S.I. 2009/3345, art. 2, Sch. para. 12

41 Interpretation.

(1) In this Act, unless the context otherwise requires—

F109**[** " the Agency " means the Environment Agency; **]**

[F110 " the appropriate national authority " means—

((a)) the Secretary of State, except in relation to Wales (within the meaning of the Government of Wales Act 2006);

((b)) in relation to Wales (within that meaning), the Welsh Ministers;**]**

"authorised officer" means—

((a)) any officer of a water authority F111 . . .;

((b)) any officer of a market authority acting within the area of the jurisdiction of that authority;

((c)) any officer appointed by the Minister;

((d)) any officer appointed in writing by the Fishmongers Company, or

Status: *Point in time view as at 12/01/2010.*
Changes to legislation: *There are currently no known outstanding effects for the Salmon and Freshwater Fisheries Act 1975. (See end of Document for details)*

((e)) any police officer;

"byelaw" means a byelaw under this Act;

"dam" includes any weir or other fixed obstruction used for the purpose of damming up water;

[[F112] " eels " means any fish of the species *Anguilla anguilla* , and includes elvers and the fry of eels; **]**

[[F113]"fish farm"—

(a) means a pond, stew, hatchery or other place used for keeping, with a view to their sale or to their transfer to other waters (including another fish farm), live fish, live eggs of fish, or foodstuff of fish, and

(b) includes any buildings used in connection with a place mentioned in paragraph (a) and the banks and margins of any water in such a place;**]**

"fishing licence" has the meaning assigned to it by section 25(2) above;

"fishing mill dam" means a dam used or intended to be used partly for the purpose of taking or facilitating the taking of fish, and partly for the purpose of supplying water for milling or other purposes;

"fishing weir" means any erection, structure or obstruction fixed to the soil either temporarily or permanently, across or partly across a river or branch of a river, and used for the exclusive purpose of taking or facilitating the taking of fish;

"Fishmongers Company" means the wardens and commonalty of the Mystery of Fishmongers in the City of London;

"fixed engine" includes—

((a)) a stake net, bag net, putt or putcher;

((b)) any fixed implement or engine for taking or facilitating the taking of fish;

((c)) any net secured by anchors and any net or other implement for taking fish fixed to the soil, or made stationary in any other way; and

((d)) any net placed or suspended in any inland or tidal waters unattended by the owner or a person duly authorised by the owner to use it for taking **[**[F114] fish **]**, and any engine, device, machine or contrivance, whether floating or otherwise, for placing or suspending such a net or maintaining it in working order or making it stationary;

"foreshore" includes the shore and bed of the sea and of every channel, creek, bay, estuary and navigable river as far up it as the tide flows;

"freshwater fish" means any fish living in fresh water exclusive of salmon and trout and of any kinds of fish which migrate to and from tidal waters and of eels;

"general licence" means a licence granted under section 25(7) above;

[F115] . . .

"immature" in relation to salmon means that the salmon is of a length of less than 12 inches, measured from the tip of the snout to the fork or cleft of the tail, and in relation to any other fish means that the fish is of a length less than such length (if any) as may be prescribed by the byelaws applicable to the water in which the fish is taken;

[F116]**[** "inland water" means any area of inland waters within the meaning of the Water Resources Act 1991;**]**

"market authority" includes any corporation, local authority, body of trustees or other persons having power to maintain or regulate any market;

"migratory trout" means trout which migrate to and from the sea;

"mill" includes any erection for the purpose of developing water power, and "milling" has a corresponding meaning;

"the Minister" means, [F117] . . ., the Minister of Agriculture, Fisheries and Food;

"occupier" in relation to a fishery or premises includes any person for the time being in actual possession of the fishery or premises;

"owner" includes any person who is entitled to receive rents from a fishery or premises;

"river" includes a stream;

"rod and line" means single rod and line;

"salmon" means all fish of the salmon species and includes part of a salmon;

[[F118] " screen " means a grating or other device which, or any apparatus the operation of which, prevents—

(a) the passage of salmon or migratory trout, and

(b) if the screen is required in connection with a fish farm, the passage of any fish farmed at that fish farm,

or any combination of devices or apparatus which, taken together, achieve that result;**]**

[[F119] " smelt " means any fish of the species *Osmerus eperlanus* ; **]**

"trout" means any fish of the salmon family commonly known as trout, including migratory trout and char, and also includes part of a trout;

"unclean" in relation to any fish means that the fish is about to spawn, or has recently spawned and has not recovered from spawning.

[F120](2) . . . . . .

[F120](2A) . . . . . .

(3) Except so far as provision is made by paragraph 13 of Schedule 3 below, nothing in this Act shall be construed as authorising a water authority or any other person to take or use land or other property belonging to the Crown.

(4) In any byelaw made under an enactment repealed by the [M14]Salmon and Freshwater Fisheries Act 1923 "salmon" and "trout" have the meanings assigned to them by subsection (1) above.

Textual Amendments

F109 S. 41(1): definition of "the Agency" inserted (1.4.1996) by 1995 c. 25, **s. 104(4)**(with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F110 Words in s. 41(1) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 221(2)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 12

F111 Words repealed by Water Act 1989 (c.15, SIF 130), ss. 141, 190, Sch. 17 para. 7(1)(11), **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

F112 Words in s. 41(1) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 223(2)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 13

F113 Words in s. 41(1) substituted (E.W.) (27.3.2009) by Aquatic Animal Health (England and Wales) Regulations 2009 (S.I. 2009/463), reg. 1(2), **Sch. 2 para. 3** (with reg. 2(2)); and words in s. 41(1)

substituted (S.) (27.3.2009) by Aquatic Animal Health (Scotland) Regulations 2009 (S.S.I. 2009/85), reg. 1(2)(c), **Sch. 2 para. 3** (with reg. 2.)

F114 Word in s. 41(1) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 14(2)**; S.I. 2009/3345, art. 2, Sch. para. 15(e)

F115 S. 41(1): definition of "grating" repealed (1.1.1999) by 1995 c. 25, ss. 105, 120(3), Sch. 15 para. 20, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 4**

F116 Definition in s. 41(1) substituted (E.W.) (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 1 para. 30(4)**

F117 Words repealed by Water Act 1989 (c.15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

F118 S. 41(1): definition of "screen" inserted (1.1.1999) by 1995 s. 105, Sch. 15 para. 20(b) (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 4**

F119 Words in s. 41(1) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 223(6)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 13

F120 S. 41(2)(2A) repealed by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

Marginal Citations

M14 1923 c. 16.

42 Repeals etc.

(1) The enactments specified in Schedule 5 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(2) In section 18(1) of the [M15]Sea Fish (Conservation Act 1967 (enforcement of orders in relation to salmon and migratory trout) for paragraph (a) there shall be substituted the following paragraph:—

> "(a) section 31 (1)(d) of the Salmon and Freshwater Fisheries Act 1975 (which confers power of seizure)shall apply as if the reference in it to that Act included a reference to this Act, and sections 36(1) and (2) of that Act, and paragraph 8 of Schedule 4 (all of which contain ancilliary provisions), shall be construed accordingly as including references to that Act as applied by this subsection;"

(3) In so far as any instrument made or other thing whatsoever done under any enactment repealed by this Act could have been made or done under a corresponding enactment in this Act, it shall not be invalidated by the repeal of that enactment but shall have effect as if made or done under that corresponding enactment; and for the purposes of this provision anything which under section 93(2) of the [M16]Salmon and Freshwater Fisheries Act 1923 had effect as if done under any enactment in that Act shall, so far as may be necessary for the continuity of the law, be treated as done under the corresponding enactment in this Act.

(4) Any enactment or other document referring to an enactment repealed by this Act or by the [M17]Salmon and Freshwater Fisheries Act 1923 shall, so far as may be necessary for preserving its effect, be construed as referring, or as including a reference, to the corresponding enactment in this Act.

(5) Nothing in this Act shall affect the admissibility in evidence of any instrument made under the [M18]Salmon Fishery Act 1865.

(6) Section 254(2)(*c*) of the [M19]Local Government Act 1972 (power of Secretary of State to amend, etc., enactments by order) shall apply to this Act as if it had been passed before 1st April 1974.

[[F121](7) The [M20]Water Act 1973 shall have effect as if the functions conferred on water authorities by section 28(1) and (2) above were conferred by it.**]**

(8) Nothing in this Act shall affect the legal right of any conservators, directors, commissioners, undertakers or other persons to dredge, scour, cleanse or improve any navigable river, canal or other inland navigation.

(9) Nothing in this Act shall be taken as prejudicing the operation of section 38 of the [M21]Interpretation Act 1889 (which relates to the effect of repeals).

Textual Amendments

F121 S. 42(7) repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

Modifications etc. (not altering text)

C37 The text of s. 42(1)(2), Sch. 5 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

Marginal Citations

M15 1967 c. 84.
M16 1923 c. 16.
M17 1923 c. 16.
M18 1865 c. 121.
M19 1972 c. 70.
M20 1973 c. 37.
M21 1889 c. 63.

43 Citation etc.

(1) This Act may be cited as the Salmon and Freshwater Fisheries Act 1975.

(2) Subject to section 39 above and subsection (3) below, this Act extends only to England and Wales.

(3) The following provisions of this Act, namely—

section 28(1) and (2) above,
section 39(1) **[**[F122],(1A)**][**[F123], (1B),(1C)**][**[F124](4) and (5)**]** above,
section 42(1) above, so far as it relates to the repeal of section 15 of the [M22]Salmon and Freshwater Fisheries Act 1972 and section 18 of the [M23]Water Act 1973,
paragraph 3 of Schedule 4 below,

extend to Scotland.

(4) This Act shall come into force on 1st August 1975.

Textual Amendments

F122 Words inserted by Salmon Act 1986 (c. 62, SIF 52:2), **s. 26(3)**

F123 Words in s. 43(3) inserted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 21** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F124 Words substituted by Salmon Act 1986 (c. 62, SIF 52:2), s. 41, **Sch. 4 para. 14**

Marginal Citations

M22 1972 c. 37.

M23 1973 c. 37.

SCHEDULES

[F125]SCHEDULE 1

Section 19.

. . . . . .

Textual Amendments

F125 Sch. 1 repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), Sch. 16 para. 15, **22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 15(f), 27(b)

SCHEDULE 2

Section 25.

LICENCES

Duty on licences

1 (1) Subject to sub-paragraph (2) below, there shall be payable in respect of a fishing licence a duty fixed in accordance with this Schedule by the water authority.

(2) The water authority may **[**[F126] in such cases as it considers appropriate **]** grant an exemption from the duty.

Textual Amendments

F126 Words in Sch. 2 para. 1(2) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 16(2)**; S.I. 2009/3345, art. 2, Sch. para. 15(g)

2 Different duties may be fixed under paragraph 1 above for **[**[F127] different descriptions of licence **]** and different classes of licence holder.

Textual Amendments

F127 Words in Sch. 2 para. 2 substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 16(3)**; S.I. 2009/3345, art. 2, Sch. para. 15(g)

3 A water authority shall at least one month before fixing or altering a duty for the use of any instrument in any part of their area, except a duty payable in respect of a temporary licence, publish in one or more newspapers circulating in that part of their area notice of their intention to do so **[**[F128]and such a notice shall set out the amount of any duty as proposed to be fixed or altered.**]**

Textual Amendments

F128 Words inserted (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 141, **Sch. 17 para. 7(1)(13)(a)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

4 If during the month immediately following the publication of a notice under paragraph 3 above a written objection to the proposed duty is made to **[**[F129] the appropriate national authority **]** by any interested person, the water authority shall not fix or alter the duty without the approval of **[**[F130] that authority **]**.

Textual Amendments

F129 Words in Sch. 2 para. 4 substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 16(5)(a)**; S.I. 2009/3345, art. 2, Sch. para. 15(g)

F130 Words in Sch. 2 para. 4 substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 16(5)(b)**; S.I. 2009/3345, art. 2, Sch. para. 15(g)

5 **[**[F131] The appropriate national authority **]**, with or without a local inquiry, may refuse to approve any duty submitted by a water authority for **[**[F132]that authority's**]** approval under paragraph 4 above or may approve the duty with or without modifications; and the authority, if so directed by **[**[F133] that authority **]**, shall cause notice of any proposed modification to be given in accordance with the direction.

Textual Amendments

F131 Words in Sch. 2 para. 5 substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 16(6)(a)**; S.I. 2009/3345, art. 2, Sch. para. 15(g)

F132 Words in Sch. 2 para. 5 substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 16(6)(b)**; S.I. 2009/3345, art. 2, Sch. para. 15(g)

F133 Words in Sch. 2 para. 5 substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 16(6)(c)**; S.I. 2009/3345, art. 2, Sch. para. 15(g)

[[X1]6 No duty fixed under the foregoing provisions of this Schedule shall take effect until the beginning of the year following that in which it is fixed or, in the case of a duty required to be approved by the Minister, in which it is approved by him.**]**

Editorial Information

X1 Sch. 2 para. 6 beginning "Where the fixing" substituted for para. 6 beginning "No duty" (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 141, **Sch. 17 para. 7(1)(13)(b)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

[[F134]6 Where the fixing or alteration of any duty takes effect under this Schedule at any time, no alteration or, as the case may be, further alteration of that duty shall so take effect within the period of twelve months beginning with that time.**]**

Textual Amendments

F134 Sch. 2 para. 6 beginning "Where the fixing" substituted for para. 6 beginning "No duty" (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 141, **Sch. 17 para. 7(1)(13)(b)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

7 A water authority may grant a temporary licence, that is to say, a licence authorising the use of an instrument for fishing in circumstances specified in the licence during a period not exceeding 14 days, and may charge in respect of that licence a duty less than the duty fixed for the use of that instrument under the foregoing provisions of this Schedule.

8 There shall be payable in respect of a general licence such sum as may be agreed by the water authority and the licensee.

Net etc. licences for salmon and trout fishing

[X2 9 A person shall be treated for the purposes of section 25(3) above as the duly authorised servant or agent of the holder of a licence to use an instrument of any description only in the following cases—

(a) in an area in which there is in force an order under section 26 above limiting the number of licences for fishing with instruments of that description, if his name and address are entered on the licence in accordance with the following provisions of this Schedule and he is not the holder of another licence to use an instrument of that description in that area;

(b) in any other area, if his name and address are so entered or when using the instrument to which the licence relates he is accompanied by the licensee; or

(c) in the case of any area, if the water authority direct that owing to special circumstances he is to be so treated.]

Editorial Information

X2 Sch. 2 para. 9 beginning "A person who uses" substituted for para. 9 beginning "A person shall be treated" (E.W. and as mentioned in s. 43(4) of the amending act (border rivers)) by Salmon Act 1986 (c. 62, SIF 52:2), **ss. 36(1)**, 43(4)

[F135 9 (1) A person who uses an instrument of any description for fishing in an area in relation to which an order under section 26 above limiting the number of licences for fishing with instruments of that description is in force shall not be treated for the purposes of section 25(3) above as the duly authorised servant or agent of any holder of a licence to use an instrument of that description unless, at the time that person uses the instrument—

(a) his name and address are entered on the licence in accordance with the following provisions of this Schedule; and

(b) he is not himself the holder of a licence to use an instrument of that description in that area; and

(c) he is accompanied by the licensee or has the consent of the water authority to his use of the instrument in the absence of the licensee.

(2) A person who uses an instrument of any description for fishing in an area in which no such order as is mentioned in sub-paragraph (1) above is in force shall not be treated

for the purposes of section 25(3) above as the duly authorised servant or agent of any holder of a licence to use an instrument of that description unless, at the time that person uses the instrument—

(a) his name and address are entered on the licence in accordance with the following provisions of this Schedule; or

(b) he is accompanied by the licensee; or

(c) he has the consent of the water authority to his use of the instrument otherwise than where there is compliance with paragraph (a) or (b) above.

(3) The consent of a water authority shall not be given under this paragraph except—

(a) in the case of a consent for the purposes of subparagraph (1)(c) above, in relation to a period which appears to the water authority to be a period throughout which the licensee will be unable through illness or injury to accompany his servant or agent;

(b) in the case of a consent for the purposes of subparagraph (2)(c) above, where the giving of the consent appears to the water authority to be required by the special circumstances of the case.**]**

Textual Amendments

F135 Sch. 2 para. 9 beginning "A person who uses" substituted for para. 9 beginning "A person shall be treated" (E.W. and as mentioned in s. 43(4) of the amending act (border rivers)) by Salmon Act 1986 (c. 62, SIF 52:2), **ss. 36(1)**, 43(4)

10 The name and address of a servant or agent may be entered on**[**[F136] or removed from **]** a licence by an employee of a water authority authorised to do so or by the licensee or an agent who has been appointed by the licensee to act for the purposes of this paragraph and whose appointment, together with his name and address, has been notified to the water authority.

Textual Amendments

F136 Words in Sch. 2 para. 10 inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 16(9)**; S.I. 2009/3345, art. 2, Sch. para. 15(g)

11 The date of entry in the licence shall be stated in the licence at the time of the making of the entry, and within twenty-four hours of the making of an entry by a licensee or his agent a copy shall be sent to the water authority, [F137]....

Textual Amendments

F137 Words in Sch. 2 para. 11 repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 217(6)(a), 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. para. 27(b)

[F138]12 . . . . . .

Textual Amendments

F138 Sch. 2 para. 12 repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 217(6)(b), 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. para. 27(b)

13 The number of servants or agents whose names may at any time be entered on a licence shall not exceed twice the number of persons who in the opinion of the water authority are required to work at one time the instrument to which the licence relates or, where the applicant for the licence notifies the authority at the time of the application that he proposes to take part in working the instrument, one less than twice that number.

14 Any person who, with intent to deceive, enters on a licence more names than are permitted by paragraph 13 above or states falsely the date of entry in a licence is guilty of an offence.

Miscellaneous

15 Subject to section 26 above, a fishing licence shall be granted by the water authority to every applicant who is at the time of the application not disqualified from holding a fishing licence, on payment of the duty in respect of the instrument to which the licence relates.

16 A fishing licence shall not confer any right to fish at a place or a time at which the licensee is not otherwise entitled to fish.

17 A fishing licence shall not authorise the erection of any structure or the use of any installation or instrument for or in connection with fishing the erection or use of which would otherwise be illegal.

18 The production of a printed copy of a statement purporting to be issued by a water authority as to a licence duty fixed and, if it be the case, approved by the Minister under this Schedule shall be prima facie evidence that the licence duty was fixed or approved as there mentioned and of the amount of the duty, and without proof of the handwriting or official position of any person purporting to sign the statement.

SCHEDULE 3

Section 28.

ADMINISTRATION

PART I

ORDERS

Scope

[F139 1 An order may provide—

(a) for the imposition, collection and recovery by a water authority of contributions assessed on several fisheries regulated by the order or on the owners and occupiers of such fisheries;

(b) for enabling the water authority with the approval of the Minister, but subject to paragraphs 2 and 3 below, to erect and work by themselves or their lessees any fixed engine for catching salmon or migratory trout within the area within which the order is to apply;

(c) for modifying in relation to the fisheries within the area any of the provisions of this Act which relate to the regulation of fisheries, or of any local Act relating to any fishery within the area.**]**

Textual Amendments

F139 Sch. 3 paras. 1–5 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt I**. (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

2 An order shall not authorise a fixed engine to be worked for a period exceeding five years unless authorisation is from time to time extended by licence of the Minister for such terms as may be specified in the licence and not exceeding at any one time five years.

3 The Minister shall not grant a licence until he has inquired into the effect of the working of the engine on the salmon or trout fisheries within the area.

4 An order may contain any incidental, consequential or supplemental provisions, including provisions for payment of compensation to persons injuriously affected by the order, which may appear to be necessary or proper for the purposes of the order.

Procedure

5 An application for an order may be made by any of the following, namely—

(a) a water authority;

[[F140](b) a **[**[F141]county or metropolitan district council**]**;**]**

(c) persons who in the opinion of the Minister are the owners of one-fourth at least in value of the several fisheries proposed to be regulated or constitute a majority of the persons holding licences to fish in public waters within the area of the proposed order;

(d) any association of persons which in the opinion of the Minister is sufficiently representative of fishing interests within that area.

Textual Amendments

F140 Sch. 3 para 5(*b*) repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 41, Sch. 17 para. 7(1)(14)(a) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**)

F141 Words substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 16, **Sch. 8 para. 20**

6 The applicant for an order shall give such security for the Minister's expenses as the Minister may require.

[F142]7 . . . . . .

Textual Amendments

F142 Sch. 3 para. 7 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

[F143]8 . . . . . .

Textual Amendments

F143 Sch. 3 para. 8 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

[F144]9 . . . . . .

Textual Amendments

F144 Sch. 3 para. 9 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt.I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

[F145]12 . . . . . .

Textual Amendments

F145 Sch. 3 para. 12 repealed by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

[F146]13 . . . . . .

Textual Amendments

F146 Sch. 3 para. 13 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

PART II

BYELAWS

[F147] . . .

Textual Amendments

F147 Heading repealed (E.W.) (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

[F148]14 . . . . . .

Textual Amendments

F148 Sch. 3 para. 14 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

[F149]15 . . . . . .

Textual Amendments

F149 Sch. 3 para. 15 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt.I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

F150 16 . . . . . .

Textual Amendments

F150 Sch. 3 para. 16 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

F151 17 . . . . . .

Textual Amendments

F151 Sch. 3 para. 17 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt.I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

F152 18 . . . . . .

Textual Amendments

F152 Sch. 3 para. 18 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

Purposes for which Byelaws may be made

F153 19 . . . . . .

Textual Amendments

F153 Sch. 3 para. 19 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

F154 20 . . . . . .

Textual Amendments

F154 Sch. 3 para. 20 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

F155 21 . . . . . .

Textual Amendments

F155 Sch. 3 para. 21 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

21A [F156] . . . . . .

Textual Amendments

F156 S. 21A repealed (E.W.) (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt.I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

[F157]22 . . . . . .

Textual Amendments

F157 Sch. 3 para. 22 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt.I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

[F158]23 . . . . . .

Textual Amendments

F158 Sch. 3 para. 23 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

[F159]24 . . . . . .

Textual Amendments

F159 Sch. 3 para. 24 repealed (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

[F160]25 . . . . . .

Textual Amendments

F160 Sch. 3 para. 25 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

[F161]26 . . . . . .

Textual Amendments

F161 Sch. 3 para. 26 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

[F162]27 . . . . . .

Textual Amendments

F162 Sch. 3 para. 27 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

28 [F163] . . . . . .

Textual Amendments

F163 Sch. 3 para. 28 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

[F164]29 . . . . . .

Textual Amendments

F164 Sch. 3 para. 29 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt.I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

[F165]30 . . . . . .

Textual Amendments

F165 Sch. 3 para. 30 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

[F166]31 . . . . . .

Textual Amendments

F166 Sch. 3 para 31 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt.I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

[F167]32 . . . . . .

Textual Amendments

F167 Sch. 3 para. 32 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt.I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

[F168]33 . . . . . .

Textual Amendments

F168 Sch. 3 para. 33 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt.I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

[F169]34 . . . . . .

Textual Amendments

F169 Sch. 3 para. 34 repealed (E.W.) (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt.I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

[F170]35 . . . . . .

Textual Amendments

F170 Sch. 3 para. 35 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt.I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

[F171]36 . . . . . .

Textual Amendments

F171 Sch. 3 para. 36 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

PART III

MISCELLANEOUS

[F172]37 . . . . . .

Textual Amendments

F172 Sch. 3 para. 37 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

[F173]38 . . . . . .

Textual Amendments

F173 Sch. 3 para. 38 repealed (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with s. 2(2), Sch. 2 paras. 10, 14(1), 15(1))

39 (1) Without prejudice to **[**[F174]section 4 of the Water Resources Act 1991**]**, a water authority—

(a) may take legal proceedings in respect of any offence against this Act, or for the enforcement of the provision of this Act or for the protection of **[**[F175]any fisheries**]** from injury by pollution or otherwise;

[F176](b) . . . . . .

(c) may obtain the services of additional constables under **[**[F177]section 25 of the Police Act 1996**]**.

(2) Nothing in this paragraph shall authorise anything to be done which may injuriously affect any navigable river, canal, or inland navigation.

Textual Amendments

F174 Words in Sch. 3 para. 39 substituted (E.W.)(1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(1), 4(2), **Sch. 1 para. 30(6)**

F175 Words substituted by Water Act 1989 (c. 15, SIF 130), ss. 141, 190, **Sch. 17 para. 7(1)(14)(g)(ii)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

F176 Sch. 3 para. 39(1)(*b*) repealed by Water Act 1989 (c. 15, SIF 130), s. 190, Sch. 27 Pt. I (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**)

F177 Words in Sch. 3 Pt. III para. 39(1)(c) substituted (22.8.1996) by 1996 c. 16, ss. 103, 104(1), **Sch. 7 Pt. II para. 26**

Modifications etc. (not altering text)

C38 Sch. 3 para. 39(1)(*a*): by Salmon Act 1986 (c. 62, SIF 52:2), **ss. 32(6)**(*b*), 43(4) it is provided that Sch. 3 para. 39(1)(*a*) is amended (E.W., and as mentioned in s. 43(4) (border rivers))

SCHEDULE 4

Section 37.

OFFENCES

PART I

PROSECUTION AND PUNISHMENT

1 (1) Column 2 of the Table below gives a description of the offences against the provisions of this Act specified in column 1 of the Table, and in relation to any such offence—

(a) column 3 shows whether the offence is punishable summarily (that is to say, on summary conviction) or on indictment or either in one way or the other; and

(b) column 4 shows the maximum punishment by way of fine or imprisonment which may be imposed on a person convicted of the offence in the way specified in column 3 (that is to say, summarily or on indictment), any reference in column 4 to a period of years or months being construed as a reference to a term of imprisonment for that period.

(2) A person guilty of an offence against any provision of this Act not specified in the Table shall be liable on summary conviction to a fine not exceeding **[**[F178]level 4 on the standard scale**]** or, in the case of a second or subsequent conviction, **[**[F178]level 4 on the standard scale**]**.

(3) A person shall be treated as acting together with another for the purposes of the above Table if

[[F179](a) both are engaged in committing—

(i) an offence under section 1 above, other than one committed without any instrument, or

(ii) an offence under section 27 above, other than one committed by means of a rod and line (only), or

(b) one is aiding, abetting, counselling or procuring the commission of such an offence by the other.**]**

TABLE

Provision of Act creating the offence	**Description of offence**	**Mode of prosecution**	**Punishment**
(1)	**(2)**	**(3)**	**(4)**
[F180Section 1 ...]	[F180Fishing with certain instruments for salmon, trout or freshwater fish and possessing certain instruments for fishing for such fish.]	[F180(a) Summarily ...]	F181 [F180 Three months or the statutory maximum or both.]
		[F180On indictment ...]	[F180Two years or a fine of both.]
Section 4 ...	Discharging poisonous or injurious matter into waters containing fish or spawn.	(a) Summarily	[F182The prescribed sum] and £40 for each day on which the offence continues after a conviction thereof.
		(b) On indictment	Two years or a fine or both.
Section 5(1) ...	Using explosives, poisons, noxious substances or electrical devices to take or destroy fish.	(a) Summarily	[F183 £50,000].
		(b) On indictment	Two years or a fine or both.
Section 5(3) ...	Destroying or damaging dams etc., to take or destroy fish.	(a) Summarily	[F182The prescribed sum].
		(b) On indictment	Two years or a fine or both.
F184	F184	F184	F184
. . .	. . .	. . .	. . .
F184	F184	F184	F184
. . .	. . .	. . .	. . .
F184	F184	F184	F184
. . .	. . .	. . .	. . .
F184	F184	F184	F184
. . .	. . .	. . .	. . .
F184	F184	F184	F184
. . .	. . .	. . .	. . .
[F180Section 27 ...]	[F180Fishing for fish otherwise than	[F180(a) If the instrument in	[F180Level 4 on the standard scale]

under the authority of a licence and possessing an unlicensed instrument with intent to use it for fishing.]	question, or each of the instruments in question, is a rod and line, summarily.]	
	[F180(b) in any other case—]	
	[F180(i)summarily]...	F181 [F180 Three months or the statutory maximum or both;]
	[F180(ii) on indictment]...	[F180Two years or a fine or both.]

Textual Amendments

F178 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46** and by 1995 c. 40, ss. 3, 7(2), Sch. 1 para. 3(1), **Sch. 2 Pt. II** it is provided (S.)(1.4.1996) that Sch. 4 para. 1(2) shall have effect as if the maximum fine that may be imposed on summary conviction for the offence mentioned therein were a fine not exceeding level 4 on the standard scale

F179 Sch. 4 para. 1(3)(a)(b) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 17(4)**; S.I. 2009/3345, art. 2, Sch. para. 15(h)

F180 Entry substituted (E.W. and as mentioned in s. 43(4) of the substituting Act (border rivers)) by Salmon Act 1986 (c. 62, SIF 52:2), **ss. 35(1)(2)**, 43(4)

F181 By 1995 c. 40, ss. 3, 7(2), Sch. 1 para. 3(1), **Sch. 2 Pt. II** it is provided (S.) (1.4.1996) that Sch. 4 Pt. I Table shall have effect as if the maximum fine that may be imposed on summary conviction for the offences mentioned therein (offences created under sections 1, 19(2)(4)(6)(7), 21, 27 of this Act) were a fine not exceeding level 4 on the standard scale

F182 Sch. 4 para. 1 table: the maximum fine which may be imposed on summary conviction shall be the prescribed sum by virtue of Magistrates' Courts Act 1980 (c. 43), **s. 32(2)**

F183 Word in Sch. 4 para. 1 substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 220(9)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 12

F184 Sch. 4 para. 1(2) entries repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), Sch. 16 para. 17(2), **22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 15(h), 27(b)

PART II

PROCEDURE

Modifications etc. (not altering text)

C39 Sch. 4 Pt. II: by Salmon Act 1986 (c. 62, SIF 52:2), **ss. 32(6)**(*b*), 43(4) it is provided that Sch. 4 Pt. II is amended (E.W. and as mentioned in the said s. 43(4) (border rivers))

2 Any offence against this Act committed on the sea-coast or at sea beyond the ordinary jurisdiction of a court of summary jurisdiction shall be deemed to have

been committed in any place abutting on that sea-coast or adjoining that sea, and may be tried and punished accordingly.

3 Offences against this Act committed in Scotland shall be proceeded against and punished in Scotland.

4 A justice of the peace shall not be disqualified from hearing any case under this Act by reason only of being a subscriber to any society for the protection of fish, but a justice shall not be entitled to hear any case in respect of an offence committed on his own land or in relation to any fishery of which he is owner or occupier.

5 The court by which a person is convicted of an offence against this Act may order the forfeiture of—

(a) any fish illegally taken by him or in his possession at the time of the offence;

(b) any instrument, bait or other thing used in the commission of the offence;

(c) in the case of an offence of unlawful possession of any substance or device in contravention of section 5 above, that substance or device; and

(d) on conviction on indictment, any vessel or vehicle used in or in connection with the commission of the offence or in which any substance or device unlawfully in his possession was contained at the time of the offence;

and may order any object so forfeited to be disposed of as the court thinks fit.

6 **[**[F185]Schedule 3 to the Customs and Excise Management Act 1979**]** (provisions relating to the forfeiture of things seized under that Act) shall apply in relation to any vessel or vehicle liable to forfeiture under paragraph 5 above as it applies in relation to anything liable to forfeiture under that Act, but in its application in relation to any such vessel or vehicle shall have effect subject to the following modifications:—

[[F186](a) paragraphs 1(2) and 5 shall be omitted;**]**

(b) for references to the Commissioners of Customs and Excise there shall be substituted references to the water authority **[**[F187]within whose area the offence in question was committed**]**; and

(c) the court shall not condemn a vehicle or vessel as forfeited under paragraph 6 of that Schedule if satisfied by its owner that that offence was committed without his knowledge and that he could not have reasonably foreseen that it would be used as mentioned in paragraph 5(*d*) above;

and where notice of claim in respect of anything is duly given in accordance with paragraphs 3 and 4 of that Schedule, as applied by this paragraph, the court shall not exercise its power of ordering forfeiture of the vessel or vehicle under paragraph 5 above.

In this paragraph "owner", in relation to a vessel or vehicle which is the subject of a hire-purchase agreement, means the person in possession of the vehicle under that agreement.

Textual Amendments

F185 Words substituted by Customs and Excise Management Act 1979 (c. 2, SIF 40:1), s. 177(1), **Sch. 4 para. 12**

F186 Sch. 4 para. 6(*a*) substituted by Customs and Excise Management Act 1979 (c. 2, SIF 40:1), s. 177(1), **Sch. 4 para. 12**

F187 Words repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

7 An authorised officer may seize any **[**[F188] fish **]** bought, sold or exposed for sale by, or in the possession for sale of, any person in contravention of this Act.

Textual Amendments

F188 Word in Sch. 4 para. 7 substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 17(5)**; S.I. 2009/3345, art. 2, Sch. para. 15(h)

8 Where any fish or any other thing of a perishable nature is seized as liable to forfeiture under paragraph 5 above, the person by whom it is seized may sell it, and the net proceeds of sale shall be liable to forfeiture in the same manner as the fish or other thing sold, and if and so far as not forfeited shall be paid on demand to the owner; but no person shall be subject to any liability on account of his neglect or failure to exercise the powers conferred on him by this paragraph.

9 If a person is convicted of an offence against this Act **[**[F189]and is subsequently convicted of any such offence**]**, the court may order that any fishing or general licence held by him shall be forfeited, and that he shall be disqualified from holding and obtaining a fishing or general licence **[**[F190]or for fishing in a water authority area**][**[F190]for having his name entered on a licence in pursuance of paragraph 9 to 14 of Schedule 2 to this Act or for fishing (either in a particular area or generally)**]** by virtue of a fishing or general licence for such period not exceeding **[**[F191]one year**][**[F191]five years**]** as the court thinks fit.

Textual Amendments

F189 Words repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 141, 190, Sch. 17 para. 7(1)(15)(a), **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

F190 Words beginning "for having his name" substituted for words beginning "or for fishing" (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 141, **Sch. 17 para. 7(1)(15)(b)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

F191 Words "five years" substituted for "one year" (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 141, **Sch. 17 para. 7(1)(15)(c)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

10 A person who is prosecuted for an offence against this Act and who is the holder of a fishing or general licence shall either—

(a) cause it to be delivered to the **[**[F192]proper officer**]**of the court not later than the day before the date appointed for the hearing, or

(b) post it, at such a time that in the ordinary course of post it would be delivered not later than that day, in a letter duly addressed to the **[**proper officer**]** and either registered or sent by the recorded delivery service, or

(c) have it with him at the hearing;

and if he is convicted of the offence and the court makes an order under paragraph 9 above the court shall order the licence to be surrendered to it; and if the offender has not posted the licence or caused it to be delivered as aforesaid and does not

surrender it as required then he shall be guilty of an offence and the licence shall be revoked from the time when its surrender was ordered.

Textual Amendments

F192 Words in Sch. 4 para. 10(a)(b) substituted (1.4.2001) by 1999 c. 22, s. 90(1), **Sch. 13 para. 86(2)** (with Sch. 14 para. 7(2)); S.I. 2001/916, **art. 2(a)(ii)** (with Sch. 2 para. 2)

11 Where a court orders a fishing or general licence to be surrendered to it under paragraph 10 above, or where by an order of a court under paragraph 9 above a person is disqualified from holding or obtaining a licence, the court shall—

(a) send notice of the order to the water authority **[**[F193]within whose area the offence was committed**]**, unless the authority prosecuted in the case;

(b) if the licence has been so surrendered, retain it and forward it to that authority, who may dispose of it as they think fit.

Textual Amendments

F193 Words repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

12 Where any person is convicted of an offence against this Act, the **[**[F194]proper officer**]** of the court before whom he is convicted shall, within one month of the date of conviction, forward a certificate of the conviction to the water authority **[**[F195]for the area in which the offence was committed**]**.

Textual Amendments

F194 Words in Sch. 4 para. 12 substituted (1.4.2001) by 1999 c. 22, s. 90(1), **Sch. 13 para. 86(2)** (with Sch. 14 para. 7(2)); S.I. 2001/916, **art. 2(a)(ii)** (with Sch. 2 para. 2)

F195 Words repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

13 A certificate under paragraph 12 above shall be receivable in evidence in all legal proceedings.

[F196]**[**14 In paragraphs 10 and 12 above " proper officer " means—

(a) in relation to a magistrates' court, the **[**[F197] designated officer **]** for the court; and

(b) in relation to the Crown Court, the appropriate officer.**]**

Textual Amendments

F196 Sch. 4 para. 14 inserted (1.4.2001) by 1999 c. 22, s. 90(1), **Sch. 13 para. 86(3)** (with Sch. 14 para. 7(2)); S.I. 2001/916, **art. 2(a)(ii)** (with Sch. 2 para. 2)

F197 Words in Sch. 4 para. 14 substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 178**; S.I. 2005/910, art. 3(y)

Status: *Point in time view as at 12/01/2010.*
Changes to legislation: *There are currently no known outstanding effects for the Salmon and Freshwater Fisheries Act 1975. (See end of Document for details)*

SCHEDULE 5

Section 43.

REPEALS

Modifications etc. (not altering text)

C40 The text of s. 42(1)(2), Sch. 5 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

Chapter	Short title	Extent of repeal
13 & 14 Geo. 5. c. 16.	The Salmon and Freshwater Fisheries Act 1923.	The whole Act.
19 & 20 Geo. 5. c. 39.	The Salmon and Freshwater Fisheries (Amendment) Act 1929.	The whole Act.
25 & 26 Geo. 5. c. 43.	The Salmon and Freshwater Fisheries Act 1935.	The whole Act.
1963 C. 38.	The Water Resources Act 1963.	In section 71(6), the words “the Salmon and Freshwater Fisheries Act 1923 or by”. In section 126(1), the words “the Salmon and Freshwater Fisheries Acts 1923 to 1972, and”.
1965 c. 56.	The Compulsory Purchase Act 1965.	In Schedule 6, the entry relating to the Salmon and Freshwater Fisheries Act 1923.
1965 c. 68.	The Salmon and Freshwater Fisheries Act 1965.	The whole Act.
1972 c. 37.	The Salmon and Freshwater Fisheries Act 1972.	The whole Act.
1973 c. 37.	The Water Act 1973.	Section 18. Section 40(4)(c). In Schedule 8, paragraphs 1 to 19 and paragraphs 95 to 97.
1974 c. 40.	The Control of Pollution 1974.	In Schedule 3, paragraph 5.

Status:
Point in time view as at 12/01/2010.

Changes to legislation:
There are currently no known outstanding effects for the Salmon and Freshwater Fisheries Act 1975.