
STATUTORY INSTRUMENTS

1999 No. 1746

The Scotland Act 1998 (Border Rivers) Order 1999

PART II

RIVER ESK

Disapplication of section 53 of the Scotland Act

3. Section 53 of the 1998 Act shall not apply to any Border rivers function of any Minister of the Crown under the 1975 Act, the 1991 Act and the 1995 Act relating solely to the conservation, management or exploitation of salmon, trout, eels and freshwater fish exercisable in relation to the River Esk (other than a function relating to any disease of fish).

Modifications of the Water Resources Act 1991

4.—(1) Sections 115 (fisheries orders), 116 (power to give effect to international obligations), 142 (fisheries contributions) and 211(3) (so far as relating to byelaws made by virtue of paragraph 6 of Schedule 25) and (6) (enforcement of byelaws) of, and paragraph 6 (byelaws for the purposes of fisheries functions) of Schedule 25 to the 1991 Act shall cease to have effect in relation to the Upper Esk.

(2) The Environment Agency shall have power, in relation to the Upper Esk to make byelaws generally for, or in connection with, the conservation, management or exploitation of salmon, trout, eels and freshwater fish.

(3) Schedule 26 to the 1991 Act shall apply to the making of any byelaw by the Environment Agency under this article as it would apply to the making of any byelaw under paragraph 6 of Schedule 25 to the 1991 Act subject to the following modifications—

- (i) subject to the following provisions of this sub-paragraph, any reference to “the relevant Minister” wherever occurring shall mean “the Minister and the Scottish Ministers acting jointly”;
- (ii) in paragraph 1(2)(a), for “the London Gazette” there is substituted “the Edinburgh and London Gazettes”;
- (iii) in paragraph 2(1), for “him” there is substituted “them”;
- (iv) in paragraph 5, for “he” there is substituted “they”; and
- (v) paragraph 7 shall cease to have effect.

Modifications of the Environment Act 1995

5.—(1) In its application to any Border rivers function relating to the conservation, management or exploitation of salmon, trout, eels and freshwater fish exercisable in relation to the Upper Esk, section 38 of the 1995 Act shall be modified—

- (a) in subsection (1), to provide that any agreement under that section only be entered into with the agreement of the Scottish Ministers; and

- (b) in subsection (2), to provide that a function of the Scottish Ministers be capable of being the subject of such an agreement but only with the agreement of the Minister.
- (2) In its application to any Border rivers function relating to the conservation, management or exploitation of salmon, trout, eels and freshwater fish exercisable in relation to the Upper Esk, section 40 of the 1995 Act shall be modified—
 - (a) by substituting for the references to “appropriate Minister” references to “Scottish Ministers and the Minister acting jointly”; and
 - (b) by substituting for section 40(3)(b)—
 - “(b) notices shall be given in the Edinburgh and London Gazettes of the giving of the direction and of where a copy of that direction may be obtained”.
- (3) Section 6(8) of the 1995 Act shall be modified by inserting before the definition of “the River Tweed” the following—
 - ““the River Esk” means that River as defined by section 111(4) of the Scotland Act 1998 or as such definition as may be modified by an order under section 111(1) of that Act;”

Fishing without right or licence in the Lower Esk

- 6.—(1) No person shall fish for or take salmon or sea trout in the Lower Esk unless either—
 - (a) he does so under the authority of, and in accordance with, a licence granted by the Environment Agency under section 25 of the 1975 Act; or
 - (b) he has a legal right to fish for salmon or he has written permission from a person having such a right.
- (2) Any person who has in his possession, for the purpose of fishing for salmon or sea trout in the Lower Esk, an instrument other than one which he is authorised, by any rule of law or, in the case of fishing under the authority of a licence, by that licence, to use for that purpose, shall be guilty of an offence.
- (3) Section 1 of the 1951 Act and section 27 of the 1975 Act shall cease to have effect in relation to the Lower Esk.
- (4) Subject to paragraph (6) below a licence granted by the Environment Agency may only authorise fishing in any part of the Lower Esk lying on or towards the south of a line representing the *medium filum*, at low water, of the main channel of the River Esk and of the main channel of the River Eden downstream of its confluence at low water with the main channel of the River Esk, wherever that line may be from time to time.
- (5) A legal right to fish for salmon, or a written permission given by a person having such a right, shall authorise fishing—
 - (a) in any part of the Lower Esk lying on or towards the north of the line described in paragraph (4) above; and
 - (b) to the extent that right or permission so authorises, in any other part of the Lower Esk.
- (6) A licence granted by the Environment Agency shall not apply to any part of the Lower Esk which is the subject of a grant of fishings granted by King James V of Scotland to the Burghers of Annan by Royal Charter dated 1st March 1538 and re-stated on 10th July 1612.
- (7) It shall be for any person claiming to have a legal right to fish for salmon, or to have written permission from such a person, to prove that he has that right or permission.
- (8) In this article—
 - “legal right to fish for salmon” means—
 - (a) a right of ownership of salmon fishings contained in a title recorded in the Register of Sasines or entered in the Land Register of Scotland;

- (b) the right of a tenant under a lease of salmon fishings granted by a person having a right under (a) above or (d) below;
- (c) the right of any person vest by operation of law in the heritable property of a person having a right under (a) above or (d) below; or
- (d) a right of salmon fishings under Royal Warrant or Royal Charter.

Offences

7.—(1) Any person who contravenes any byelaw made under article 4, or who contravenes article 6, shall be guilty of an offence.

(2) Any person guilty of an offence under this article shall be liable—

- (a) on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding three months; and
- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(3) In addition to any penalty imposed by paragraph (2), the court before which a person is convicted of an offence under article 6 may order the forfeiture of—

- (a) any licence issued to that person under section 25 of the 1975 Act;
- (b) any fish in respect of which the offence was committed; and
- (c) any net or other fishing instrument, vessel or vehicle used in the commission of the offence,

and may order that that person be disqualified from holding a licence under section 25 of the 1975 Act for such period as may be specified.

(4) Proceedings for an offence under this article may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the Sheriffdom of Dumfries and Galloway or within the Commission of the Peace for Cumbria.

Enforcement

8.—(1) The powers of water bailiffs, of any person appointed by the Minister and of a constable under sections 31(1), 32 to 34, and 36 of the 1975 Act shall apply to any offence under article 7 above as they apply to an offence under that Act.

(2) The powers of water bailiffs and constables under sections 10 to 12 of the 1951 Act shall apply to any offence under article 7 above as they apply to an offence under that Act.

(3) Any person referred to in paragraphs (1) and (2) above may exercise his powers in any part of the River Esk.

(4) A water bailiff who reasonably suspects that a person is, intends to, or has been, fishing in the River Esk may require that person—

- (a) to produce his licence or other authority to fish; and
- (b) to state his name and address.

(5) Any person who fails to comply with such a requirement or provides false information in response to it shall be guilty of an offence; but any person who complies with paragraph (4)(a) above within 7 days of being so required shall not be convicted of an offence under this paragraph.

(6) Any person who resists or otherwise obstructs a water bailiff in the exercise of any power referred to in paragraphs (1) or (2) above shall be guilty of an offence.

(7) Any person guilty of an offence under paragraph (5) and (6) above shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(8) Article 7(4) above applies to an offence under this article as it does to an offence under article 7.

(9) Section 10(6) of the 1951 Act and sections 31(2) and 35 of the 1975 Act shall cease to have effect in relation to the River Esk.

Waters landward of River Esk estuary limits

9. The waters on the landward side of the estuary limits of the River Esk which require to be determined in accordance with paragraph (b) of the definition of “the River Esk” in section 111(4) of the 1998 Act are as set out in the Schedule to this Order.

Reports

10.—(1) The Environment Agency shall, at the same time as it sends a copy of a report to the appropriate Minister in accordance with section 52(1) of the 1995 Act, send a copy of that report to the Scottish Ministers.

(2) The Scottish Ministers shall cause a copy of that report to be laid before the Scottish Parliament.