



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

2003 asp 15

## PART 7

### GENERAL

#### 67 Application of this Act to the Crown

- (1) Subject to such modifications as may be prescribed by regulations made by the Scottish Ministers, Parts 2, 3 and 4 of this Act shall apply to land—
  - (a) an interest in which belongs to Her Majesty in right of the Crown;
  - (b) an interest in which belongs to a government department or the Scottish Administration; or
  - (c) which is held in trust for Her Majesty for the purposes of a government department or the Scottish Administration,and, for the purposes of this section, “land” includes salmon fisheries.
- (2) Except as provided in subsection (1) above, this Act shall not apply to the Crown.

#### 68 Orders and regulations

- (1) Any power of the Scottish Ministers to make an order or regulations under this Act shall be exercised by statutory instrument.
- (2) Subject to subsections (3) and (4) below, a statutory instrument containing any order or regulations under this Act shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (3) Subsection (2) above does not apply to regulations or orders under sections—
  - (a) 33(1) (specific prohibitions of baits and lures);
  - (b) 34(2) (designation orders);
  - (c) 34(3) (orders ancillary to designation orders);
  - (d) 36(3) (estuary limits orders);
  - (e) 36(5) (orders ancillary to estuary limits orders);

- (f) 37(3) (annual close time orders);
- (g) 40(8) (division between upper and lower proprietors);
- (h) 48(1) (protection orders);
- (i) 71(2) (commencement orders),

of this Act.

- (4) No regulations are to be made under section 31(4)(c) of this Act unless a draft has been laid before, and approved by resolution of, the Parliament.

## 69 Interpretation

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

- “the 1862 Act” means the Salmon Fisheries (Scotland) Act 1862 (c. 97);
- “the 1864 Act” means the Salmon Fisheries (Scotland) Act 1864 (c. 118);
- “the 1868 Act” means the Salmon Fisheries (Scotland) Act 1868 (c. 123);
- “the 1862 to 1868 Acts” means the 1862 Act, the 1864 Act and the 1868 Act;
- “the 1986 Act” means the Salmon Act 1986 (c. 62);
- “annual close time for salmon” has the meaning given in section 37(1) of this Act;
- “annual close time for trout” has the meaning given in section 17 of this Act;
- “assessor” means an assessor appointed under section 27 of the Local Government etc. (Scotland) Act 1994 (c. 39);
- “bag net, fly or other stake net” shall be construed in accordance with any regulations made under section 31(4) of this Act;
- “boat” includes any craft or vessel used in fishing;
- “certificated fixed engine” has the meaning given in section 1(5)(a) of this Act;
- “coastal limits” means the limits of sea coast fixed for a salmon fishery district either prior to the coming into force of this Act or by an order under section 34(2) of this Act;
- “cruise” shall be construed in accordance with any regulations made under section 31(1)(b) of this Act;
- “dam” means any weir, dam, dyke, cauld, mill dam or other structure constructed in the bed of any stream, river or loch for the purpose of controlling, impounding or diverting water therefrom;
- “designation order” has the meaning given in section 34(2) of this Act;
- “district” means a salmon fishery district;
- “district salmon fishery board” has the meaning given in section 43 of this Act;
- “enactment” includes any Act of Parliament or Act of the Scottish Parliament, and any subordinate legislation made under either of such Acts;
- “estuary limits” has the meaning given in section 36 of this Act;
- “fish farm” has the same meaning as in section 10(1) of the Diseases of Fish Act 1937 (c. 33);
- “fishery” and “salmon fishery” mean a salmon fishery in any river or estuary or in the sea;
- “fixed engine” means any engine, net or trap used for the taking of salmon, other than a sweep net which when in use is hauled through the water continuously and is not allowed to be stationary in the water or to drift with the current;

“freshwater fish” means any fish living in fresh water, including trout and eels and the fry of eels but exclusive of salmon and of any kind of fish which migrate between the open sea and tidal waters;

“haaf net” shall be construed in accordance with any regulations made under section 31(4) of this Act;

“inland waters” includes all rivers above estuary limits and their tributary streams, and all waters, watercourses and lochs whether natural or artificial which drain or drain to some extent into the sea;

“lade” includes any artificial channel through which water is diverted from any inland water in which salmon or trout are present;

“land” includes land covered by water;

“net and coble” shall be construed in accordance with any regulations made under section 31(4) of this Act;

“package” includes any box, basket, barrel, case, receptacle, sack, bag, container, wrapper or other thing in which salmon or trout is placed for the purpose of carriage, consignment or exportation;

“pointing” means the action of using the point of the rod as a means of hooking a fish;

“prescribed area”, in relation to protection orders, has the meaning given in section 48 of this Act;

“proprietor” means, subject to subsection (3) below, any person, partnership, company or corporation which is the proprietor of a salmon fishery or which receives or is entitled to receive the rents of such fishery on its own account or as trustee, guardian or factor for any person, company or corporation; and

“qualified proprietor” has the meaning given in section 40 of this Act;

“river” includes tributaries and any loch from or through which any river flows;

“rod and line” has the meaning given in section 4 of this Act;

“salmon” means all fish of the species *Salmo salar* and migratory fish of the species *Salmo trutta* and commonly known as salmon and sea trout respectively or any part of any such fish;

“salmon fishery district” has the meaning given in section 34(1) of this Act, and

“district” shall be construed accordingly;

“subordinate legislation” means Orders in Council, orders, rules, regulations, schemes, warrants, byelaws and other instruments made or to be made under any Act of Parliament or Act of the Scottish Parliament;

“tenant netsman” means a person in possession of a right, under a lease or sub-lease, of fishing for salmon with nets;

“the Solway” means the waters to the east of a line from the Mull of Galloway to Hodbarrow Point, so far as any of them lie within Scotland;

“trout” means non-migratory trout of the species *Salmo trutta* living in fresh water or in estuaries;

“valuation roll” means a roll made up under section 28(1) of the Local Government etc. (Scotland) Act 1994 (c. 39) or, in relation to the Borders, Dumfries and Galloway, Fife, Highland, Orkney Islands, Shetland Islands or Western Isles, under section 1 of the Local Government (Scotland) Act 1975 (c. 30);

“vehicle” means any conveyance other than a vehicle used for the purposes of a public passenger transport service within the meaning of the Transport Act 1985 (c. 67); and

“water bailiff” means any person appointed as such by—

- (a) a district salmon fishery board under section 45(3)(b); or
- (b) by the Scottish Ministers under section 55(5),

of this Act.

- (2) References to an occupier of a right of fishing for freshwater fish are references to a person who is in possession of that right as tenant under a lease of land to which such a right pertains or under a contract which by virtue of section 66 of this Act is deemed to be a lease and, for the purposes of this subsection “tenant” and “lease” include “subtenant” and “sublease” respectively.
- (3) In this Act, “proprietor” includes not more than one person authorised by—
  - (a) in the case of a fishery in which more than one person has a pro indiviso share, such persons; or
  - (b) in the case of a fishery in which the rights to that fishery are shared by more than one person in any other way, such persons;
 but in neither case does it include, except by virtue of this subsection, a person whose right to that fishery is so shared.

## **70 Consequential amendments, repeals and revocations**

- (1) The Acts mentioned in Part 1 of schedule 4 to this Act shall have effect subject to the amendments mentioned in that Part, being amendments consequential upon the provisions of this Act.
- (2) The enactments mentioned in the first column of Part 2 of schedule 4 to this Act are repealed or revoked to the extent mentioned in the second column of that Part, except in so far as they apply to the River Tweed or the Upper Esk.

## **71 Short title, commencement and extent**

- (1) This Act may be cited as the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003.
- (2) This Act (except this section) shall come into force on such date as the Scottish Ministers may by order made by statutory instrument appoint.
- (3) This Act does not apply to the River Tweed.
- (4) This Act does not apply to the Upper Esk.
- (5) Section 6 of this Act does not apply to the Lower Esk.
- (6) For the purposes of this section and section 70 of this Act—
  - “River Tweed” and “River Esk” have the same meaning as in section 111 of the Scotland Act 1998 (c. 46);
  - “Upper Esk” means that part of the River Esk lying upstream of a line drawn from a point at grid reference NY 3245 6632 on the western bank of the River Sark in a southerly direction to a point at grid reference NY 3245 6503 on the coast of Cumbria; and
  - “Lower Esk” means that part of the River Esk lying downstream of the line drawn from a point at grid reference NY 3245 6632 on the western bank of the River

Sark in a southerly direction to a point at grid reference NY 3245 6503 on the coast of Cumbria.