



# Salmon Act 1986

## 1986 CHAPTER 62

An Act to make fresh provision for the administration of salmon fisheries in Scotland; to provide as to the licensing and regulation of salmon dealing in Scotland and in England and Wales; to provide for, and as respects, certain offences in the law of Scotland and in the law of England and Wales in connection with salmon; to amend the Salmon and Freshwater Fisheries Act 1975, section 5 of the Sea Fisheries Regulation Act 1966 and section 9 of the Diseases of Fish Act 1983; to provide for the review of salmon fishing by means of nets; and for connected purposes. [7th November 1986]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Modifications etc. (not altering text)

**C1** Act: transfer of functions (1.7.1999) by [S.I. 1999/672, art. 2, Sch. 1](#)

### Commencement Information

**II** Act apart from s. 21 in force at 07.01.1987 see [s. 43](#); Act wholly in force 01.01.1993 by [S.I. 1992/1973](#).

## PART I

### ADMINISTRATION OF SALMON FISHERIES IN SCOTLAND

#### *Salmon fishery districts*

#### **1 Salmon fishery districts.**

- (1) A salmon fishery district shall be the area within the coastal limits of a district (within the meaning of the Salmon Fisheries (Scotland) Acts 1862 to 1868) and extending—

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- (a) seaward for three miles from mean low water springs and
  - (b) landward to include the catchment area of each river which flows directly or indirectly into the sea within these limits
- but excluding any area designated as a salmon fishery district by an order made under subsection (2) below.
- (2) Notwithstanding subsection (1) above, the Secretary of State may, in accordance with section 2 of this Act, by order designate any area as a salmon fishery district, whether or not it includes all or part of a salmon fishery district—
- (a) established by subsection (1) above; or
  - (b) already designated as such by an order made under this subsection;
- and such an order is referred to in this Act as a “designation order”.
- (3) Districts within the meaning of the Salmon Fisheries (Scotland) Acts 1862 to 1868 shall cease to exist and, subject to subsection (6) below—
- (a) any reference in any enactment to a particular district within that meaning shall be construed as a reference to the salmon fishery district established by subsection (1) above which has the same coastal limits as that district; and
  - (b) for references in any enactment, excluding this Act, to such districts in general there shall be substituted references to salmon fishery districts
- and a salmon fishery district which has the same coastal limits as a district within the meaning of these Acts shall have the same name as that district.
- (4) After consulting such persons as he thinks fit, the Secretary of State may, by order made by statutory instrument—
- (a) where an island or part of an island is not within the area of a salmon fishery district by virtue of subsections (1) or (2) above, include in the area of a salmon fishery district—
    - (i) that island or that part; and
    - (ii) the sea within three miles from mean low water springs on that island or that part;
  - (b) where there is doubt as to whether a particular place is in a particular salmon fishery district, make provision for the purpose of removing that doubt; or
  - (c) change a reference used in describing a salmon fishery district where the suitability of that reference for that purpose has lessened or ceased
- but such an order shall not create a salmon fishery district.
- (5) The River Tweed shall not be a salmon fishery district except as otherwise provided in this Act.
- (6) References in the <sup>M1</sup>Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 and in any other enactment as amended by that Act to a district shall be construed as including references to the River Tweed.

**Marginal Citations**

**M1** 1951 c. 26.

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## 2 Designation orders.

- (1) A designation order shall provide for the abolition of such salmon fishery districts as are superseded by the district so designated.
- (2) A designation order shall provide for the application to the district so designated of such regulations—
  - (a) made under section 3 of this Act; or
  - (b) made under the Salmon Fisheries (Scotland) Acts 1862 to 1868 as respects the matters specified in section 6(6) of the <sup>M2</sup>Salmon Fisheries (Scotland) Act 1862as the Secretary of State specifies in the order and he may, in such an order, amend regulations made under section 3(2)(d) of this Act or under section 6(6) of that Act in their application under this subsection.
- (3) Subject to section 6(1) of this Act, a designation order shall specify for the district so designated the annual close time and the periods within that time when it is permitted to fish for and take salmon by rod and line; and the order may make different provision for different parts of the district.
- (4) The power under section 1(2) of this Act to make a designation order shall not extend to the River Tweed.
- (5) Schedule 1 shall have effect as to the procedure in the making of a designation order.
- (6) The Secretary of State may by order vary the provisions of Schedule 1 to this Act.
- (7) An order under subsection (6) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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### Marginal Citations

M2 1862 c. 97.

### *General regulation of salmon fisheries*

## 3 Regulations.

- (1) Subject to subsection (4) below, regulations made under the Salmon Fisheries (Scotland) Acts 1862 to 1868 as respects the matters specified in section 6(6) of the Salmon Fisheries (Scotland) Act 1862 shall have effect in relation to a salmon fishery district as they had effect, immediately before the commencement of this section, in relation to the part of that salmon fishery district which was a district within the meaning of these Acts and which had the same coastal limits as that salmon fishery district.
- (2) The Secretary of State shall have power, after consulting such persons as he considers appropriate, to make regulations with respect to—
  - (a) the due observance of the weekly close time;
  - (b) the construction and use of cruives;
  - (c) the construction and alteration of dams, including mill dams, or lades or water wheels so as to afford a reasonable means for the passage of salmon;

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- (d) the meshes, materials and dimensions of nets used in fishing for or taking salmon;
  - (e) obstructions in rivers or estuaries to the passage of salmon;
  - (f) the construction, alteration and use for the control of the passage of salmon of—
    - (i) screens in off-takes from inland waters; and
    - (ii) structures associated with such screens.
- (3) The Secretary of State shall have power, after consulting such persons as he considers appropriate, to make regulations amending section 13 of the <sup>M3</sup>Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (extent of the weekly close time and the period within which rod and line fishing is permitted); provided always that such regulations shall not shorten the periods specified in the said section 13.
- (4) The power to make regulations under subsection (2) above includes power to revoke any regulations as described in subsection (1) above; and such regulations shall be treated as revoked insofar as they are inconsistent with the provisions of regulations made under this section.
- (5) The power to make regulations under paragraphs (c) or (f) of subsection (2) above includes power to except from the application of a regulation or part of a regulation any works or any category of works; and section 11 of the <sup>M4</sup>Salmon Fisheries (Scotland) Act 1868 shall apply to regulations so made.
- (6) The power to make regulations under subsection (2)(d) above includes power—
- (a) to make different provision for different districts or different parts of a district;
  - (b) to except from the application of a regulation or part of a regulation a district or part of a district specified in the regulations.
- (7) References in any enactment, other than in this Act or in section 36 of the Salmon Fisheries (Scotland) Act 1868, to—
- (a) byelaws or regulations made under the Salmon Fisheries (Scotland) Acts 1862 to 1868 as respects the matters specified in section 6(6) of the <sup>M5</sup>Salmon Fisheries (Scotland) Act 1862; or
  - (b) the provisions of any of the Schedules to that Act of 1868 relating to such matters
- shall be construed as including references to regulations made under subsection (2) above.
- (8) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Marginal Citations	
<b>M3</b>	1951 c. 26.
<b>M4</b>	1868 c. 123.
<b>M5</b>	1862 c. 97.

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#### Textual Amendments

**F1** S. 4 repealed by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(3)(4), Sch. 17 para. 35(1), [Sch. 18](#)

## 5 Enforcement of regulations.

- (1) In section 15 of the <sup>M6</sup>Salmon Fisheries (Scotland) Act 1868 (offences related to regulations)—
  - (a) for the words from the beginning to “following offences” there shall be substituted the words “ Any person ”;
  - (b) paragraph (7) shall be omitted; and
  - (c) for the words from “shall for every such offence” to the end there shall be substituted the words “ shall be guilty of an offence; and section 19 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (forfeiture of fish, instruments, articles, vehicles or boats) shall apply in relation to persons convicted of an offence under this section as it applies to those convicted of an offence under Part I or section 13 of that Act ”.
- (2) Without prejudice to the generality of section 3(7) of this Act, in section 15 of that Act, “byelaw”—
  - (a) in paragraph (8), shall include regulations made under section 3(2) of this Act and the offence specified in that paragraph shall, as respects such regulations, extend to so much of the River Tweed as is situated outwith Scotland; and
  - (b) in paragraphs (2), (3) and (4), shall include such regulations except to the extent that they extend to the River Tweed.

#### Marginal Citations

**M6** 1868 c. 123.

## 6 Annual close time.

- (1) The annual close time for a salmon fishery district shall be a continuous period of not less than 168 days and shall apply to every mode of fishing for and taking salmon except to the extent that provision is made for periods within that time during which it is permitted to fish for and take salmon by rod and line.
- (2) Subject to subsection (3) below, the dates of the annual close time and the periods within that time when it is permitted to fish for and take salmon by rod and line shall be, in the case of any particular district—
  - (a) the dates and periods specified in the designation order made in respect of that district; or
  - (b) where no designation order has been made in respect of that district, the dates and periods which were determined under section 6(5) of the <sup>M7</sup>Salmon Fisheries (Scotland) Act 1862, subject to any variation made under section 9 of the <sup>M8</sup>Salmon Fisheries (Scotland) Act 1868, which, immediately before the commencement of this section, were in force as respects the district within the meaning of the Salmon Fisheries (Scotland) Acts 1862 to 1868 which had the same coastal limits as that salmon fishery district.

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- (3) Notwithstanding subsection (2) above, the Secretary of State may, subject to subsection (1) above, by order prescribe for any district the dates of the annual close time and the periods within that time when it is permitted to fish for and take salmon by rod and line and he may make different provision for different parts of a district; and such an order is referred to in this Act as an “annual close time order”.
- (4) The Secretary of State may make an annual close time order in respect of a salmon fishery district only on application to him by—
- (a) the district salmon fishery board for that district; or
  - (b) where there is no such board, two proprietors of salmon fisheries in that district.
- (5) An application under subsection (4) above shall be accompanied by the applicant’s written proposals which shall state—
- (a) the proposed dates of the annual close time and the periods within that time when it shall be permitted to fish for and take salmon by rod and line in the district; and
  - (b) the general effect of the proposals
- and the proposals may include different dates and periods for different parts of the district.
- (6) Paragraphs 3 to 9 of Schedule 1 to this Act shall apply to the making of an annual close time order as they apply to the making of a designation order, and for this purpose—
- (a) references to a designation order shall be construed as references to an annual close time order; and
  - (b) references to an applicant, and to an application, under paragraph 1 shall be construed respectively as references to an applicant, and to an application, under subsection (4) above.
- (7) References in any enactment, other than in this Act, to—
- (a) regulations or byelaws made under the Salmon Fisheries (Scotland) Acts 1862 to 1868 as respects the matters specified in section 6(5) of the <sup>M9</sup>Salmon Fisheries (Scotland) Act 1862; or
  - (b) the provisions of Schedule C to the <sup>M10</sup>Salmon Fisheries (Scotland) Act 1868 relating to such matters
- shall be construed as including references to an annual close time order or to such part of a designation order as provides for the annual close time for a salmon fishery district.

#### **Marginal Citations**

**M7** 1862 c. 97.

**M8** 1868 c. 123.

**M9** 1862 c. 97.

**M10** 1868 c. 123.

## **7 Estuary limits.**

- (1) Subject to subsection (2) below, the estuary limits of a river shall be the limits fixed by judicial decision or fixed and defined under section 6(1) of the Salmon Fisheries (Scotland) Act 1862.

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- (2) Whether or not a river has estuary limits as described in subsection (1) above, the Secretary of State may, by order, prescribe limits or, as the case may be, different limits which shall be the estuary limits for that river; and such an order is referred to in this Act as an “estuary limits order”.
- (3) The Secretary of State may make an estuary limits order only on application to him by—
  - (a) the district salmon fishery board for the district in which the river is situated; or
  - (b) where there is no such board, two proprietors of salmon fisheries in that district.
- (4) An application under subsection (3) above shall be accompanied by the applicant’s written proposals which shall state—
  - (a) the proposed estuary limits; and
  - (b) the general effect of the proposals.
- (5) Paragraphs 3 to 9 of Schedule 1 to this Act shall apply to the making of an estuary limits order as they apply to the making of a designation order, and for this purpose—
  - (a) references to a designation order shall be construed as references to an estuary limits order; and
  - (b) references to an applicant, and to an application, under paragraph 1 shall be construed respectively as references to an applicant, and to an application, under subsection (3) above.
- (6) For the purposes of this section—

“estuary limits” means limits which divide each river including its mouth or estuary from the sea; and

“river” does not include the River Tweed.
- (7) References in any enactment, other than in this Act or in section 36 of the <sup>M11</sup>Salmon Fisheries (Scotland) Act 1868, to—
  - (a) byelaws or regulations made under the <sup>M12</sup>Salmon Fisheries (Scotland) Act 1862 to 1868 as respects the matters specified in section 6(1) of the Salmon Fisheries (Scotland) Act 1862; or
  - (b) the provisions of Schedule B to the Salmon Fisheries (Scotland) Act 1868 relating to such mattersshall be construed as including references to an estuary limits order.

#### Marginal Citations

**M11** 1868 c. 123.

**M12** 1862 c. 97.

## 8 Use of baits and lures.

- (1) The Secretary of State may, subject to the provisions of this section, make regulations specifying baits and lures for the purposes of the definition of “rod and line” in section 24 of the <sup>M13</sup>Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951.



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- (2) The Secretary of State may make regulations under this section only on—
- (a) application to him by a district salmon fishery board; or
  - (b) a joint application to him by more than one such board,
- and regulations made in respect of such application shall be made only in respect of the district of the applicant.
- (3) Regulations under this section shall specify, subject to such exceptions as may be provided therein, all or any, or a combination of, the following—
- (a) baits and lures or classes of baits and lures;
  - (b) times when the regulations apply;
  - (c) areas to which the regulations apply.
- (4) An application under subsection (2) above shall be accompanied by the applicant's written proposals which shall state—
- (a) the baits and lures which it is proposed should be specified;
  - (b) the places to which and the times during which the proposed regulations should apply; and
  - (c) the reasons for the proposals.
- (5) Paragraphs 3 to 9 of Schedule 1 to this Act shall apply to the making of regulations under this section as they apply to the making of a designation order, and for this purpose—
- (a) references to a designation order shall be construed as references to regulations under this section; and
  - (b) references to an applicant, and to an application, under paragraph 1 shall be construed respectively as references to an applicant, and to an application, under subsection (2) above.
- (6) In section 24(1) of the <sup>M14</sup>Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951, at the end of the definition of “rod and line” there shall be inserted the following — “and, in the case of fishing for salmon in an area to which and at a time during which regulations made under section 8 of the Salmon Act 1986 apply, is not specified in such regulations in respect of that area and time”.

**Marginal Citations**

**M13** 1951 c. 26.

**M14** 1951 c. 26.

**9 Limits of the Solway Firth.**

References in any enactment to the limits of the Solway Firth shall be construed as references to the limits which were fixed under section 6(2) of the <sup>M15</sup>Salmon Fisheries (Scotland) Act 1862.

**Marginal Citations**

**M15** 1862 c. 97.



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## 10 Application of regulations and annual close time orders to the River Tweed

- (1) The byelaw enacted by section 10 of the <sup>M16</sup>Salmon Fisheries (Scotland) Act 1868 as Schedule G to that Act, as amended by any other enactment, and so much of section 15 of that Act as relates thereto shall continue to have effect in relation to the River Tweed as it had effect before the commencement of this section.
- (2) Regulations made under section 3 of this Act shall have effect in relation to the River Tweed but the power to make regulations under subsection (2)(d) of that section includes power to except the River Tweed from the application of any such regulation.
- (3) Where such regulations have effect in relation to the River Tweed—
  - (a) references to a salmon fishery district shall include references to the River Tweed; and
  - (b) references to a district salmon fishery board shall include references to the River Tweed Councilunless the contrary intention appears.
- (4) Subsections (3), (4)(a), (5) and (6) of section 6 and section 8 of this Act shall have effect in relation to the River Tweed with the following modifications—
  - (a) references to a salmon fishery district shall include references to the River Tweed;
  - (b) references to a district salmon fishery board shall include references to the River Tweed Counciland Schedule 1 to this Act shall, for the purposes of this subsection, be construed accordingly.
- (5) In making an annual close time order in respect of the River Tweed, the Secretary of State may prescribe an annual close time, being a continuous period of not less than 153 days.
- (6) The power to make regulations under—
  - (a) section 3(2)(a) of this Act includes power to amend section 12 of the <sup>M17</sup>Tweed Fisheries Amendment Act 1859;
  - (b) section 3(2)(d) of this Act includes power to amend sections 12 and 13 of that Act of 1859; and
  - (c) section 3(2)(e) of this Act includes power to amend section 57 of the <sup>M18</sup>Tweed Fisheries Act 1857; and
  - (d) section 8 of this Act includes power to amend section 6 of the Tweed Fisheries Amendment Act 1859and the power to make an annual close time order in respect of the River Tweed includes power to amend section 6, 10 and 11 of that Act of 1859.
- (7) This section extends to so much of the River Tweed as is situated outwith Scotland.

### Marginal Citations

**M16** 1868 c. 123.

**M17** 1859 c. lxx.

**M18** 1857 c. cxlviii.

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VALID FROM 15/04/2001

## **[<sup>F2</sup>10A Regulations to assist conservation of salmon**

- (1) An application may be made by any person who may make an application in relation to an annual close time order under section 6(4) of this Act to the Scottish Ministers to make regulations under subsection (3) below.
- (2) An application under subsection (1) above shall be in writing and shall contain the applicant's proposals, including—
  - (a) a general description of the proposals;
  - (b) a statement as to why the applicant considers that the proposals are necessary or expedient; and
  - (c) a statement as to the general effect of the proposals.
- (3) The Scottish Ministers shall have power to make regulations—
  - (a) on an application under subsection (1) above; or
  - (b) otherwise,
 if they consider that it is necessary or expedient to do so for the conservation of salmon.
- (4) For the purposes of subsection (3) above, regulations shall not be taken to be for something other than the conservation of salmon by reason only that they also have effect in relation to the management of salmon fisheries for exploitation.
- (5) In considering whether or not it is necessary or expedient to make regulations under subsection (3) above, the Scottish Ministers shall have regard to any representations made to them by any person having an interest in fishing for or taking salmon, or in the environment.
- (6) Regulations under this section may be made in relation only to salmon fisheries; and, subject to subsection (7)(b) below, such regulations shall not be made in respect of matters in relation to which the Scottish Ministers have power to make regulations or orders under any other provision of this Act or under any other enactment relating to the management of salmon or freshwater fisheries.
- (7) Without prejudice to the generality of the power conferred by subsection (3) above, regulations under this section may—
  - (a) specify the type of information about any salmon fishery that a district salmon fishery board may require from the proprietor of the fishery and the time within which such information shall (if required) be supplied;
  - (b) specify baits and lures for the purposes of the definition of “rod and line” in section 24 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951.]

### **Textual Amendments**

**F2** Ss. 10A-10E inserted (S.) (15.4.2001) by 2001 asp 3, s. 1; S.S.I. 2001/116, art. 2

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VALID FROM 15/04/2001

### **F<sup>3</sup>10B Powers of enforcement, entry, search and arrest**

- (1) Section 10(1)(d) of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (c.26) (powers of water bailiffs) and, in relation thereto, subsections (3) and (6) of that section shall apply to a water bailiff, a person appointed by the Scottish Ministers under subsection (5) of that section and any constable for the purposes of the enforcement of any provision of any regulations made under section 10A of this Act as they apply to a water bailiff for the purposes of that Act; and for this purpose the reference in the said section 10(1)(d) to forfeiture in pursuance of that Act shall be construed as a reference to forfeiture by virtue of section 10C of this Act.
- (2) Section 27 of the Salmon Fisheries (Scotland) Act 1868 (c.123) (constables or water bailiffs entering upon land) shall apply to a water bailiff and any constable for the purposes of the enforcement of any provision of any regulations made under section 10A of this Act as it applies to them for the purposes of the enforcement of the provisions of the said Act of 1951.
- (3) Regulations under section 10A of this Act may make provision in relation to a water bailiff, a person appointed by the Scottish Ministers under section 10(5) of the said Act of 1951 or any constable conferring on him such further powers of enforcement, in relation to the regulations, as the Scottish Ministers consider necessary or expedient for the conservation of salmon.
- (4) Section 11 of the said Act of 1951 (powers of entry and search) and, in relation thereto, section 10(3) and (6) of that Act shall apply to an offence against any provision of any regulations made under section 10A of this Act as they apply to an offence against any of the provisions of sections 3 and 4 of that Act; and for this purpose any reference in the said section 11 to an offence against any of the provisions of sections 3 and 4 of that Act shall be construed as a reference to an offence against any of the provisions of any regulations made under section 10A of this Act.
- (5) Section 12 of the said Act of 1951 (apprehension of offenders) and, in relation thereto, section 10(3) and (6) of that Act shall apply to an offence against any provision of any regulations made under section 10A of this Act as they apply to an offence against the provisions of Part I of that Act; and for this purpose any reference in the said section 12 to an offence against the provisions of Part I of that Act shall be construed as a reference to an offence against the provisions of any regulations made under section 10A of this Act.

#### **Textual Amendments**

**F3** Ss. 10A-10E inserted (S.) (15.4.2001) by 2001 asp 3, s. 1; S.S.I. 2001/116, art. 2

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VALID FROM 15/04/2001

#### **F<sup>4</sup>10C Offences, penalties, forfeiture etc.**

- (1) Any person who—
  - (a) acts in contravention of; or
  - (b) fails to take any action required of him by, or to comply with any requirement imposed on him by,
 any provision of any regulations made under section 10A of this Act, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (2) Sections 7(3) (evidence), 19 (forfeiture) and 20 (disposal of seized fish) of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (c.26) shall apply in the case of a conviction under this section of this Act as they apply in the case of a conviction against Part I, section 7 or section 13, as the case may be, of that Act.
- (3) For the purpose of subsection (2) above—
  - (a) the reference in the said section 7(3) to “this section” shall be construed as a reference to this section of this Act;
  - (b) any reference in the said section 19 to an offence against Part I or section 13 of that Act shall be construed as a reference to an offence against any provision of any regulations made under section 10A of this Act; and
  - (c) the reference in the said section 20 to “this Act” shall be construed as a reference to regulations made under section 10A of this Act.

#### **Textual Amendments**

**F4** Ss. 10A-10E inserted (S.) (15.4.2001) by 2001 asp 3, s. 1; S.S.I. 2001/116, art. 2

VALID FROM 15/04/2001

#### **F<sup>5</sup>10D Regulations**

- (1) Regulations under section 10A of this Act shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (2) Such regulations may make—
  - (a) provision generally in relation to any district or river, or in relation to any time or season;
  - (b) different provision for different districts or different parts of a district, or for different parts of a river, or for different cases or classes of case.
- (3) Paragraphs 3 to 8 of Schedule 1 to this Act shall apply to the making of regulations under section 10A(3)(a) of this Act as they apply to the making of a designation order and for this purpose—

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- (a) references to an applicant, and to an application, under paragraph 1 shall be construed respectively as references to an applicant, and to an application, under the said section 10A; and
  - (b) references to a designation order shall be construed as references to the regulations.
- (4) Paragraphs 3 to 8 of Schedule 1 to this Act shall apply to the making of regulations under section 10A(3)(b) of this Act as they apply to the making of a designation order and for this purpose—
- (a) references to an applicant and to an application shall be omitted;
  - (b) references to a designation order shall be construed as references to the regulations;
  - (c) the reference in paragraph 3 to the persons who shall be consulted shall be construed as including, in particular, such district salmon fishery boards as the Scottish Ministers consider appropriate; and
  - (d) paragraph 4(3) shall be omitted.

#### Textual Amendments

**F5** Ss. 10A-10E inserted (S.) (15.4.2001) by 2001 asp 3, s. 1; S.S.I. 2001/116, art. 2

VALID FROM 15/04/2001

#### **F6** 10E Application to River Esk

Sections 10A to 10D of this Act shall apply to so much of the River Esk, including its banks and tributary streams, as is situated in Scotland; and, for the purpose of section 10A(1) of this Act, section 6(4) of this Act shall be deemed to apply to the River Esk, its banks and tributary streams.

#### Textual Amendments

**F6** Ss. 10A-10E inserted (S.) (15.4.2001) by 2001 asp 3, s. 1; S.S.I. 2001/116, art. 2

### *Proprietors*

#### **11 Qualified proprietors and upper and lower proprietors.**

- (1) A qualified proprietor shall be, for the purposes of this Act, a proprietor of a salmon fishery entered in the valuation roll.
- (2) Where any salmon fishery is not entered or not entered separately in the valuation roll, the assessor shall, on the request of—
  - (a) the clerk to the district salmon fishery board for the district in which the fishery is situated; or
  - (b) where there is no such board for the district, the proprietor of that fishery, value that fishery and enter it in the valuation roll.

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**Changes to legislation:** There are currently no known outstanding effects for the Salmon Act 1986. (See end of Document for details)

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- (3) If a salmon fishery is situated in more than one salmon fishery district the assessor shall, on the request of—
- (a) the clerk to the district salmon fishery board for either or any of these districts; or
  - (b) where there is no such board, the proprietor of that fishery
- value that fishery and enter it in the valuation roll according to its value in each district.
- (4) A qualified proprietor shall be an upper proprietor or a lower proprietor for the purposes of this Act according to whether his salmon fishery is, respectively, upstream or downstream of a division of a river as defined in subsection (7) below and, in this Act, “upper proprietor” and “lower proprietor” each mean a qualified proprietor.
- (5) A qualified proprietor shall be both an upper proprietor and a lower proprietor if he is a qualified proprietor of one salmon fishery situated above and another situated below a division referred to in subsection (4) above, whether or not both fisheries are on the same river in the district, and he may act in either capacity or in both capacities in accordance with the provisions of this Act.
- (6) Subject to subsection (5) above, a qualified proprietor in a salmon fishery district shall not be eligible for election, co-option or appointment to the district salmon fishery board for that district in respect of more than one salmon fishery.
- (7) The division referred to in subsection (4) above shall be—
- (a) a line across the river between points on either bank prescribed by the Secretary of State under subsection (8) below; or
  - (b) where the Secretary of State has not prescribed such points but a point of division has been fixed in accordance with section 6(4) of the <sup>M19</sup>Salmon Fisheries (Scotland) Act 1862, that point of division; or
  - (c) where no division has been effected under paragraphs (a) or (b) above, the normal tidal limit.
- (8) When requested to do so by the district salmon fishery board for the district in which a river is situated, the Secretary of State may, by order made by statutory instrument, prescribe a point on each bank of the river to which the request relates.
- (9) The clerk to a district salmon fishery board shall maintain a roll showing—
- (a) the upper and lower proprietors in the district; and
  - (b) the values of their fisheries as entered in the valuation roll;
- and the board may, if they are satisfied that a name should be added or removed, add or remove it.
- (10) Subject to section 5 of the <sup>M20</sup>Sheriff Courts (Scotland) Act 1907 (jurisdiction as regards heritable property), the sheriff may, on summary application made to him by a person whose request to the board to add or remove a name has not been met, order the board to add or remove that name.

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**Marginal Citations**

**M19** 1862 c. 97.

**M20** 1907 c. 51.

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**Status:** Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.

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## **12 Sole proprietor in a salmon fishery district.**

- (1) Where, after the commencement of this section, there is in a salmon fishery district only one proprietor of salmon fisheries, for references in this Act, except under paragraph 1 of Schedule 2 to this Act, to two proprietors of salmon fisheries in a salmon fishery district for which there is no board there shall be substituted references to that sole proprietor.
- (2) Where, immediately before the commencement of this section, there is a sole proprietor in a district within the meaning of the Salmon Fisheries (Scotland) Acts 1862 to 1868, the powers of a district board conferred on him by section 19 of the Salmon Fisheries (Scotland) Act 1862 shall, on the commencement of this Act, cease to be exercisable by him.
- (3) A person appointed as a water bailiff by a sole proprietor mentioned in subsection (2) above shall, on the commencement of this section, cease to have the powers and duties of a water bailiff conferred on him by or under any enactment to the extent that such powers and duties relate to that appointment.

## **13 Mandatories.**

- (1) A qualified proprietor or an elected member or chairman of a district salmon fishery board may at any time authorise a person to act for him; and such a person is referred to in this Act as a “mandatory”.
- (2) A mandatory may as such be elected under Schedule 2 to this Act as a representative of qualified proprietors or as chairman but a person may not authorise another to act as a co-opted member under this Act nor shall a mandatory be co-opted under section 16(2) of this Act.
- (3) A person who is both an upper and a lower proprietor by virtue of section 11(5) of this Act may authorise a person in accordance with this section in either or both of his capacities or may do so in each capacity.

### *District salmon fishery boards*

## **14 District salmon fishery boards.**

- (1) If proprietors of salmon fisheries in a salmon fishery district—
  - (a) form an association for the purpose of the protection or improvement of the fisheries within their district; and
  - (b) elect, in accordance with Schedule 2 to this Act, a committee to act for them, that committee shall be the district salmon fishery board for that district; and the purpose of such a board shall be the purpose specified above in respect of the association.
- (2) A district salmon fishery board shall have the powers and duties conferred—
  - (a) on them under this Act; and
  - (b) by any other enactment on a district board within the meaning of the Salmon Fisheries (Scotland) Acts 1862 to 1868;and references in any enactment, other than in this Act, to a district board within the meaning of the Salmon Fisheries (Scotland) Acts 1862 to 1868 shall be construed as references to a district salmon fishery board.



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- (3) Subject to subsection (4) below, a committee mentioned in subsection (1) above shall cease to be the district salmon fishery board for a district on the expiry of a period of three years from the date of the last meeting of proprietors which elected, in accordance with Part I of Schedule 2 to this Act, such members as require to be elected under Part II of that Schedule.
- (4) On the coming into force of a designation order—
  - (a) the transitional district board for; or
  - (b) the committee within the meaning of this section in respect of
 a district superseded by the district so designated, as the case may be, shall cease to be a district salmon fishery board; and the committee within the meaning of this section which has been constituted in accordance with Schedule 2 to this Act in anticipation of the order and in respect of the district designated by the order shall be the district salmon fishery board for that district.
- (5) If a committee ceases to be a district salmon fishery board, the assets and liabilities of that board shall be the assets and liabilities of the members of the association for which the committee acts; but, for the purposes of the winding-up of such an association, any assets of the former board remaining after the settlement of the liabilities of the former board shall be distributed amongst all the proprietors in the district who were liable to the fishery assessment immediately before the date on which the committee ceased to be such a board, according to the valuation of each fishery as entered in the valuation roll at that date.
- (6) A district salmon fishery board shall not be bound by any direction given to them by the association for which the elected members of the board act as a committee.
- (7) Nothing in this section shall affect the powers and duties of the River Tweed Council.
- (8) The powers and duties under any enactment of district boards constituted in accordance with the Salmon Fisheries (Scotland) Acts 1862 to 1868 shall cease to have effect in relation to such boards and Schedule 3 to this Act shall have effect as respects such a board which was in office immediately before the commencement of this section; and such a board is referred to in this Act as a “transitional district board”.
- (9) There may be a district salmon fishery board for a district whether or not there are salmon in the waters of that district.
- (10) The Secretary of State may by order vary the provisions of Schedule 2 or Schedule 3 to this Act.
- (11) An order under subsection (10) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **15 Financial powers and duties of district salmon fishery boards.**

- (1) Each year, a district salmon fishery board shall prepare—
  - (a) a report; and
  - (b) a statement of accounts, which shall be audited,
 relating to the activities of the board; and the clerk of the board shall call an annual meeting of qualified proprietors in the district for the purposes of considering the report and the audited accounts.

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- (2) A district salmon fishery board shall have power to impose an assessment, to be known as the fishery assessment, on each salmon fishery in their district.
- (3) The fishery assessment shall be assessed at such uniform rate or rates as are determined for all fisheries in the district by the board and shall be exigible according to the valuation of a fishery as entered in the valuation roll.
- (4) Subsections (2) and (3) of section 11 of this Act shall apply for the purposes of this section as they apply for the purposes of that section.
- (5) Arrears of fishery assessment may be recovered by—
  - (a) the district salmon fishery board which imposed the assessment; or
  - (b) the district salmon fishery board for a district created by a designation order in respect of an assessment imposed by a district salmon fishery board for a district superseded by that order; or
  - (c) the district salmon fishery board which replaced a transitional district board in respect of an assessment imposed by the transitional district board,as the case may be, by action for payment of money.
- (6) Any of the boards mentioned in subsection (5) above may recover arrears of fishery assessment which were due immediately before the commencement of this section under section 23 of the <sup>M21</sup>Salmon Fisheries (Scotland) Act 1862 in respect of any part of their district.
- (7) The powers under subsections (5) and (6) above to recover arrears of fishery assessment include power to recover interest, chargeable at such rate as the Secretary of State shall, with the consent of the Treasury, determine, on such arrears from—
  - (a) in the case of recovery of arrears under subsection (5) above which have been outstanding for at least three months from the date of issue of a notice of assessment, that date; or
  - (b) in the case of recovery of arrears under subsection (6) above which have been outstanding for at least three months from the date of the coming into force of this section, that date,until payment or the commencement of an action for payment, whichever is the earlier.
- (8) A board may, in carrying out its purpose under this Act, borrow—
  - (a) an amount not exceeding twice the amount of the fishery assessment collected within the twelve month period immediately prior to the date of the decision to borrow; or
  - (b) such higher sum as is approved by the proprietors of fisheries which together amount to four fifths of the total value of fisheries in the district as entered in the valuation roll.
- (9) In subsection (8)(a) above, “collected” means collected in—
  - (a) the district for which that board is the district salmon fishery board; and
  - (b) if that district has been designated in an order made under section 1(2) of this Act within that twelve month period, all the districts superseded by that order.
- (10) In carrying out its purpose, a district salmon fishery board may authorise expenditure, including expenditure for the acquisition of heritable property, out of sums accruing to it from—
  - (a) the fishery assessment;

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- (b) the exercise of the power, under subsection (8) above, to borrow; or
- (c) any other source;

but it shall not pay to any member of that board any salary or fees for his acting in any way as a member of or under that board.

#### **Marginal Citations**

**M21** 1862 c. 97.

### **16 General powers and duties of district salmon fishery boards.**

- (1) A district salmon fishery board may do such acts, execute such works and incur such expenses as may appear to them expedient for—
  - (a) the protection or improvement of the fisheries within their district;
  - (b) the increase of salmon; or
  - (c) the stocking of the waters of the district with salmon.
- (2) The elected members of a district salmon fishery board shall, in accordance with Part II of Schedule 2 to this Act, co-opt representatives of salmon anglers and tenant netmen.
- (3) On such terms and conditions as the board think fit, a district salmon fishery board—
  - (a) shall appoint a person to act as clerk to the board; and
  - (b) may appoint persons to act as water bailiffs, or in such other capacity as the board see fit.
- (4) A district salmon fishery board may sue or be sued in the name of their clerk.
- (5) References in any enactment to water bailiffs shall include references to water bailiffs appointed under this section.

### **17 Proceedings of district salmon fishery boards.**

- (1) The first meeting of a district salmon fishery board shall be at the date, time and place determined by the members of the board who were elected at the meeting of qualified proprietors called under paragraph 1 of Schedule 2 to this Act but in any case shall be no later than 21 days after that meeting.
- (2) A district salmon fishery board shall determine the quorum for their meetings.
- (3) At any meeting of the board, each member shall have one vote, subject to the following exceptions—
  - (a) the chairman, in his capacity as such, shall have both a casting and a deliberative vote; and
  - (b) a person who is both an upper proprietor and a lower proprietor by virtue of section 11(5) of this Act shall have a vote in either capacity or in both capacities according to the capacity or capacities in which he has been elected or co-opted.
- (4) No act or proceeding of a district salmon fishery board shall be questioned on account of any vacancy in their membership and no defect in the qualification or appointment of any person acting as a member shall vitiate any proceedings of the board in which that member has taken part.

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- (5) The minutes of proceedings of district salmon fishery boards shall be signed by the chairman and shall be conclusive evidence of the proceedings; and a meeting so minuted shall be presumed to have been duly convened and held and all members thereof to have been duly qualified.
- (6) On the written request of any two members of the board, the chairman shall be bound to convene a meeting of the board within fourteen days of receiving the request and the clerk shall give notice to each member of the date, time and place of and the agenda for that meeting.

## **18 Tenure of office.**

- (1) Before the expiry of a period of three years from—
  - (a) the first election of the members of the board; or
  - (b) the last meeting of qualified proprietors called under this sectionthe clerk to that board shall call a meeting of qualified proprietors in that district for the purpose of electing or re-electing, in accordance with Part I of Schedule 2 to this Act, such members as require to be elected under Part II of that Schedule; and at that meeting each member of the board shall resign.
- (2) The provisions of Schedule 2 to this Act, apart from paragraph 1, shall apply to further elections as they apply to the first election of the members.
- (3) Without prejudice to subsection (1) above, a member of a district salmon fishery board may resign at any time and where a person ceases to meet the requirements of this Act for membership of a district salmon fishery board he shall cease to be a member of that board.
- (4) Where a person is both an upper and a lower proprietor by virtue of section 11(5) of this Act, subsection (3) above shall have effect as respects either or each such capacity.
- (5) Where a vacancy in their number occurs, the board shall, so far and as soon as is reasonably practicable, fill that vacancy by—
  - (a) the electing by the elected members from amongst themselves of a new chairman;
  - (b) the appointing by the elected members of a qualified proprietor in the district as a representative of qualified proprietors according to the rules in Schedule 2 to this Act regarding the balance between upper and lower proprietors; and
  - (c) the co-opting by the board of a representative of salmon anglers or of tenant netmen in accordance with that Schedule,as the case may be, and a person appointed under paragraph (b) above shall be an elected representative of qualified proprietors for the purposes of this Act.

### *Application to the Esk*

## **19 Application of Part I to the River Esk.**

The provisions of Part I of this Act shall not apply to so much of the River Esk, including its banks and tributary streams, as is situated in Scotland.

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## PART II

### OTHER PROVISIONS APPLYING TO SCOTLAND

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

- (1) Without prejudice to the generality of section 44 of the <sup>M22</sup>Civic Government (Scotland) Act 1982 (power to designate additional activities as subject to licensing and regulation) an order as respects dealing in salmon made under that section may—
- (a) define dealing in salmon and so define it as to—
    - (i) include such acts preparatory to or connected with dealing in salmon;
    - (ii) exclude dealing in such class or classes of salmon
 as may be specified in the order;
  - (b) provide that the offence under section 7(1) of that Act (doing anything for which a licence is required without having one) shall be punishable—
    - (i) on summary conviction, by imprisonment for a term not exceeding three months, or a fine not exceeding the statutory maximum or both;
    - (ii) on conviction on indictment, by imprisonment for a term not exceeding two years, or a fine or both;
  - (c) provide that it shall be an offence for any person, other than a person holding a salmon dealer's licence, to buy salmon from or sell salmon to a person not having such a licence;
  - (d) provide that the offences under the said section 7(1) and any provision under paragraph (c) above shall be subject to such exceptions as may be specified in the order;
  - (e) provide that a licence shall be required only for such class or classes of dealing in salmon and dealing in such class or classes of salmon as may be specified in the order;
  - (f) provide as to the exercise of powers of entry and search by water bailiffs and persons appointed by the Secretary of State under section 10(5) of the <sup>M23</sup>Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 but not so as to enable these powers to be exercised in any dwelling house or any yard, garden, outhouses and pertinents belonging thereto or usually enjoyed therewith.
- (2) The Secretary of State shall have power, by order to prescribe, or to prescribe the maximum amounts of, the fees which the licensing authority may determine and charge under sub-paragraph (1) of paragraph 15 of Schedule 1 to the said Act of 1982 in respect of the licensing of dealing in salmon; and in that respect the licensing authority's powers under that paragraph shall be subject to the provisions of any such order.
- (3) An order made under subsection (2) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Marginal Citations

**M22** 1982 c. 45.

**M23** 1951 c. 26.

**Status:** Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Salmon Act 1986. (See end of Document for details)

VALID FROM 01/01/1993

## 21 Permitted methods of fishing for salmon.

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

(a) after subsection (1) there shall be inserted the following subsection—

“(1A) No person shall fish for or take salmon in any waters in a salmon fishery district other than inland waters, except by rod and line, net and coble or bag net, fly net or other stake net.”

(b) after subsection (2) there shall be inserted the following subsections—

“(2A) After consulting such persons as he considers appropriate, the Secretary of State may, for the purposes of this section, by regulations define fishing for or taking salmon by—

- (a) net and coble;
- (b) bag net, fly net or other stake net,

whether by reference to anything used for the purpose, or to the circumstances in which or method by which it is so used, or to any combination thereof; and, in relation to net and coble, may make different provision as respects inland waters from that made as respects other waters.

(2B) The power to make regulations under this section includes power to amend or repeal section 62 of the Tweed Fisheries Act 1857 and section 12 and 13 of the Tweed Fisheries Amendment Act 1859.

(2C) Regulations made under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

### Commencement Information

**I2** S. 21 wholly in force at 1.1.1993 see s. 43(2) and S.I. 1992/1973, art. 2.

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

(1) After section 7 of the <sup>M24</sup>Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 there shall be inserted the following section—

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

(1) A person who—

- (a) is in possession of salmon and believes; or
- (b) is in possession of salmon in circumstances in which it would be reasonable for him to suspect

that a relevant offence has at any time been committed in relation to the salmon shall be guilty of an offence and liable—

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- (i) on summary conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding the statutory maximum or both;
  - (ii) on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine or both.
- (2) It shall be a defence in proceedings for an offence under this section to show that no relevant offence had in fact been committed in relation to the salmon.
- (3) It shall be lawful to convict a person charged under this section on the evidence of one witness.
- (4) For the purposes of this section an offence is a relevant offence in relation to a salmon if—
- (a) it is committed by taking, killing or landing that salmon, either in Scotland or in England and Wales; or
  - (b) that salmon is taken, killed or landed, either in Scotland or in England and Wales in the course of the commission of the offence.
- (5) In subsection (4) above, “offence”, in relation to the taking, killing or landing of salmon either in Scotland or in England or Wales, means an offence under the law applicable to the place where the salmon is taken, killed or landed.
- (6) A person shall not be guilty of an offence under this section in respect of conduct which constitutes a relevant offence in relation to any salmon or in respect of anything done in good faith for purposes connected with the prevention or detection of crime or the investigation or treatment of disease.
- (7) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (8) Where the affairs of a body corporate are managed by its members, subsection (7) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.”.
- (2) In section 11 of that Act (power of search)—
- (a) in each of subsections (1) and (3) for the words “three and four” there shall be substituted “ 1 to 4, 7 and 7A ”;
  - (b) after the said subsection (3) there shall be inserted the following subsection—
    - “(3A) Where a constable has reasonable grounds for suspecting that an offence against section 7A of this Act is being committed and that evidence of the commission of the offence is to be found in any premises (other than a dwelling-house or any yard, garden, outhouses and pertinents belonging thereto or usually enjoyed therewith) but by reason of urgency or other good cause it is impracticable to apply for a warrant to search such premises, he may search them without warrant.”;
  - (c) in subsection (4)—



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- (i) for the words “section three or section four” there shall be substituted “any of the provisions of sections 1 to 4, 7 and 7A”;
- (ii) after the word “thereon” there shall be inserted the words—
  - “or in any stationary vehicle on—
  - (a) a road within the meaning of the Roads (Scotland) Act 1984; or
  - (b) a highway within the meaning of the Highways Act 1980adjoining such water or such land, ”.

**Marginal Citations**

**M24** 1951 c. 26.

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

If, upon a trial for an offence under—

- (a) section 10 of the <sup>M25</sup>Tweed Fisheries Amendment Act 1859 (having or selling salmon taken from the River Tweed during annual close time);
- (b) section 21 of the <sup>M26</sup>Salmon Fisheries (Scotland) Act 1868 (buying or selling salmon in close time);
- (c) section 7 of the <sup>M27</sup>Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (possessing illegally taken salmon or trout);
- (d) section 7A of the said Act of 1951 (possessing illegally taken salmon); or
- (e) any rule of law relating to reset;

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

**Marginal Citations**

**M25** 1859 c. cxlviii.

**M26** 1868 c. 123.

**M27** 1951 c. 26.

**24 Unauthorised introduction of salmon or salmon eggs into certain waters.**

- (1) A person who intentionally introduces any salmon or salmon eggs into inland waters in a salmon fishery district for which there is a district salmon fishery board shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (2) A person shall not be guilty of an offence under this section in respect of an introduction of salmon or salmon eggs into such waters if—
  - (a) he has the previous written consent of the district salmon fishery board for the salmon fishery district in which these waters are situated; or

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- (b) the waters constitute or are included in a fish farm within the meaning of the <sup>M28</sup>Diseases of Fish Act 1937.

**Marginal Citations**

M28 1937 c. 33.

**25 Fixed engines in the Solway.**

After section 7 of the <sup>M29</sup>Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951, there shall be inserted the following section—

**“7B Fixed engines in the Solway.**

- (1) Any person who, for the purpose of taking or obstructing the free passage of salmon, places or uses an uncertificated fixed engine within the limits of the Solway Firth in Scotland shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (2) In subsection (1) above—  
“fixed engine” includes any net or other implement for taking fish which is fixed to the soil or made stationary in any other way; and  
“uncertificated” means not having been certified as privileged under section 5 of the Solway Salmon Fisheries Commissioners (Scotland) Act 1877.”

**Marginal Citations**

M29 1951 c. 26.

**26 Poaching in the Esk.**

- (1) Section 21 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951, (non-application of that Act to the River Esk in Scotland) shall be renumbered as subsection (1) of that section and—
- (a) at the beginning of that subsection there shall be inserted the words “ Subject to subsection (2) below, ”; and
- (b) after that subsection there shall be added the following subsection—
- “(2) Section 1 of this Act and sections 3 and 18 to 20 so far as relating to an offence under that section shall apply to so much of the River Esk, including its banks and tributary streams, as is situated in Scotland.”.
- (2) In section 39 of the <sup>M30</sup>Salmon and Freshwater Fisheries Act 1975 (application of that Act to certain Border waters including the River Esk) there shall be inserted after subsection (1) the following subsection—
- “(1A) In the application of this Act, under subsection (1)(b) above, to the River Esk in Scotland, references to this Act in sections 31 to 33 and section 36 shall be construed as including references to sections 1, 3 and 18 to 20 of the Salmon

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and Freshwater Fisheries (Protection) (Scotland) Act 1951 as applied to that River by section 21 of that Act.”.

- (3) In section 43(3) of the said Act of 1975 (Scottish extent) after the words “39(1)” there shall be inserted the word “, (1A) ”.
- (4) Section 9 of the Solway Act 1804 shall, so far as relating to salmon, cease to have effect in relation to so much of the River Esk, including its banks and tributary streams, as is situated in Scotland.

#### Marginal Citations

M30 1975 c. 51.

## 27 Exemption from certain offences in respect of certain acts.

- (1) A person shall not, in respect of any act or omission relating to fishing for or taking salmon, be guilty of a contravention of an enactment prohibiting or regulating that act or omission if the act or omission has been exempted by the Secretary of State.
- (2) The Secretary of State may exempt an act or omission under subsection (1) above only if he is satisfied that—
  - (a) the proprietor of every affected salmon fishery in the salmon fishery district in which the act or omission is to take place, being a salmon fishery entered in the valuation roll; and
  - (b) if there is one, the district salmon fishery board for that districthave previously consented to it; and, in this subsection, “salmon fishery district” includes the River Tweed and, in relation to that river, “district salmon fishery board” means the River Tweed Council.
- (3) In subsection (2) above, “affected” means appearing to the Secretary of State to be likely to be affected by the exemption.
- (4) An exemption under this subsection—
  - (a) may relate only to such person as may be specified in it;
  - (b) may be subject to such conditions as may be so specified;
  - (c) shall be in writing;
  - (d) shall specify—
    - (i) the limits of the waters to which it relates;
    - (ii) its duration; and
    - (iii) the enactment to which it relates.
- (5) In this section, “enactment” includes any instrument made after the passing of this Act under any enactment.

#### Modifications etc. (not altering text)

C2 S. 27 modified (30.6.1999) by S.I. 1999/1746, arts. 1(1), 11(4)(5)

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*Changes to legislation: There are currently no known outstanding effects for the Salmon Act 1986. (See end of Document for details)*

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

- (1) A person shall not, in respect of any act or omission relating to salmon or salmon roe or eggs, be guilty of a contravention of an enactment prohibiting or regulating that act or omission if—
  - (a) the act or omission is for—
    - (i) some scientific purpose;
    - (ii) the purpose of protecting, improving or developing stocks of fish; or
    - (iii) the purpose of conserving any creature or other living thing; and
  - (b) he has obtained the previous permission in writing—
    - (i) if the act or omission is one to which this sub-paragraph applies, of the district salmon fishery board for the salmon fishery district in which it takes place or of the Secretary of State; and
    - (ii) in any other case, of the Secretary of State for the act or omission.
- (2) Sub-paragraph (i) of subsection (1)(b) above applies if the act or omission referred to in that sub-paragraph—
  - (a) takes place in a salmon fishery district for which there is a district salmon fishery board; and
  - (b) is a contravention of—
    - (i) section 45 of the <sup>M31</sup>Tweed Fisheries Act 1857;
    - (ii) section 6 of the <sup>M32</sup>Tweed Fisheries Amendment Act 1859;
    - (iii) section 18, 19 or 20 of the <sup>M33</sup>Salmon Fisheries (Scotland) Act 1868; or
    - (iv) section 2 or 4(c) of the <sup>M34</sup>Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951.
- (3) A permission under subsection (1) above shall specify the act or omission permitted and the enactment to which the permission relates.
- (4) In this section—
  - (a) references to a salmon fishery district and to a district salmon fishery board include respectively references to the River Tweed and to the River Tweed Council;
  - (b) “enactment” includes any instrument made after the passing of this Act under any enactment.

### Modifications etc. (not altering text)

**C3** S. 28 modified (30.6.1999) by S.I. 1999/1746, arts. 1(1), 11(4)(5)

### Marginal Citations

**M31** 1857 c. cxlviii.  
**M32** 1859 c. lxx.  
**M33** 1868 c. 123.  
**M34** 1951 c. 26.

## 29 Application of sections 24 and 25 to River Esk and River Tweed.

- (1) Sections 27 and 28 of this Act, as respects any enactment—

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

### 30 Prosecution of offences under the Act of 1868.

- (1) Section 30 and sections 38 to 40 of the <sup>M35</sup>Salmon Fisheries (Scotland) Act 1868 (prosecution of offences at the instance of the clerk to a district board or of any other person) shall cease to have effect but any proceedings begun before the commencement of this section shall proceed as if this section had not been passed.
- (2) A person who commits an offence under section 15 or sections 18 to 24 of that Act may be convicted on the evidence of one witness.

#### Marginal Citations

M35 1868 c. 123.

## PART III

### PROVISIONS APPLYING TO ENGLAND AND WALES

### 31 Dealer licensing in England and Wales.

- (1) The Minister of Agriculture, Fisheries and Food and the Secretary of State may by order made by statutory instrument make provision for the purpose of prohibiting persons, in such cases as may be specified in the order, from—
- (a) dealing in salmon otherwise than under and in accordance with a license issued in pursuance of the order by such person as may be so specified; or
  - (b) buying salmon from a person who is not licensed to deal in salmon.
- (2) Without prejudice to the generality of subsection (1) above, an order under this section may—
- (a) prescribe the manner and form of an application for a licence to deal in salmon and the sum, or maximum sum, to be paid on the making of such an application;
  - (b) specify the circumstances in which such an application is to be granted or refused and the conditions that may be incorporated in such a licence;
  - (c) authorise the amendment, revocation or suspension of such a licence;
  - (d) create a criminal offences consisting in the contravention of, or failure to comply with, provisions made under this section;

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- (e) provide for matters to be determined for the purposes of any such provision by a person authorised by any such provision to issue a licence; and
  - (f) make provision, whether by applying provisions of the <sup>M36</sup>Salmon and Freshwater Fisheries Act 1975 or otherwise, for the purpose of facilitating the enforcement of any provision made under this section.
- (3) An order under this section may—
- (a) make different provision for different cases; and
  - (b) contain such incidental, supplemental and transitional provision as appears to the Minister of Agriculture, Fisheries and Food and the Secretary of State to be necessary or expedient.
- (4) Except in the case of an order to which subsection (5) below applies, no order shall be made under this section unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (5) A statutory instrument containing an order under this section which relates exclusively to the sum, or maximum sum, to be paid on the making of an application for a licence to deal in salmon shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this section “deal”, in relation to salmon, includes selling any quantity of salmon, whether by way of business or otherwise, and acting on behalf of a buyer or seller of salmon.

**Marginal Citations**

M36 1975 c. 51.

**32 Handling salmon in suspicious circumstances.**

- (1) Subject to subsections (3) and (4) below, a person shall be guilty of an offence if, at a time when he believes or it would be reasonable for him to suspect that a relevant offence has at any time been committed in relation to any salmon, he receives the salmon, or undertakes or assists in its retention, removal or disposal by or for the benefit of another person, or if he arranges to do so.
- (2) For the purposes of this section an offence is a relevant offence in relation to a salmon if—
- (a) it is committed by taking, killing or landing that salmon, either in England and Wales or in Scotland; or
  - (b) that salmon is taken, killed or landed, either in England and Wales or in Scotland, in the course of the commission of the offence.
- (3) It shall be immaterial for the purposes of subsection (1) above that a person’s belief or the grounds for suspicion relate neither specifically to a particular offence that has been committed nor exclusively to a relevant offence or to relevant offences; but it shall be a defence in proceedings for an offence under this section to show that no relevant offence had in fact been committed in relation to the salmon in question.
- (4) A person shall not be guilty of an offence under this section in respect of conduct which constitutes a relevant offence in relation to any salmon or in respect of anything

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done in good faith for purposes connected with the prevention or detection of crime or the investigation or treatment of disease.

- (5) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (6) The <sup>M37</sup>Salmon and Freshwater Fisheries Act 1975 shall have effect as if—
- (a) in section 31(1)(b) and (c) (powers of search of water bailiffs), the references to a fish taken in contravention of that Act included references to a salmon in relation to which a relevant offence has been committed; and
  - (b) in sections 33(2) (warrants to enter suspected premises), 36(1) (water bailiffs to be constables for the purpose of enforcing Act) and 39(1) (border rivers) and in paragraph 39(1)(a) of Schedule 3 (prosecution by water authorities) and Part II of Schedule 4 (procedure on prosecutions), the references to that Act included references to this section.
- (7) In this section “offence”, in relation to the taking, killing or landing of a salmon either in England and Wales or in Scotland, means an offence under the law applicable to the place where the salmon is taken, killed or landed.

#### Marginal Citations

M37 1975 c. 51.

### 33 Placing and use of fixed engines.

- (1) For subsection (1) of section 6 of the Salmon and Freshwater Fisheries Act 1975 (under which it is an offence to place a fixed engine in any inland or tidal waters or to use an unauthorised fixed engine for specified purposes) there shall be substituted the following subsection—

“(1) Any person who places or uses an unauthorised fixed engine in any inland or tidal waters shall be guilty of an offence”.

- (2) In subsection (3) of the said section 6 (definition of unauthorised fixed engine), at the end of paragraph (b) there shall be inserted “; or
- (c) a fixed engine the placing and use of which is authorised by byelaws made by a water authority under this Act or by byelaws made by a local fisheries committee by virtue of section 37(2) of the Salmon Act 1986.”

- (3) In Part II of Schedule 3 to the said Act of 1975 (byelaws), after paragraph 21 there shall be inserted the following paragraph—

“21A Authorising the placing and use of fixed engines at such places in the water authority area (not being places within the sea fisheries district of a local fisheries committee), at such times and in such manner as may be prescribed by the byelaws and imposing requirements as to the construction, design, material and dimensions of such engines, including in the case of nets the size of mesh.”.



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**34 Introduction of fish into fish farms without consent.**

In section 30 of the <sup>M38</sup>Salmon and Freshwater Fisheries Act 1975 (prohibition of introduction of fish into inland waters without the consent of the water authority), at the end there shall be added the words “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.

In this section “fish farm” has the same meaning as in the <sup>M39</sup>Diseases of Fish Act 1937.”.

**Marginal Citations**

- M38** 1975 c. 51.
- M39** 1937 c. 33.

**35 Removal of differential penalties under Salmon and Freshwater Fisheries Act 1975.**

(1) In the Table in Part I of Schedule 4 to the Salmon and Freshwater Fisheries Act 1975 (mode of prosecution and punishment for offences), for the entries relating to sections 1 and 27 (being entries which make different provision according to whether the offender acted with another and do not provide for imprisonment on summary conviction) there shall be substituted the following entries, respectively—

<i>Provision of Act creating the offence</i>	<i>Description of offence</i>	<i>Mode of prosecution</i>	<i>Punishment</i>
(1)	(2)	(3)	(4)
“Section 1...	Fishing with certain instruments for salmon, trout or freshwater fish and possessing certain instruments for fishing for such fish.	(a) Summarily ... ..	Three months or the statutory maximum or both.
Section 27 ...	Fishing for fish otherwise than under the authority of a licence and possessing an unlicensed instrument with intent to use it for fishing.	(b) On indictment ... ..  (a) If the instrument in question, or each of the instruments in question, is a rod and line, summarily.	Two years or a fine or both.  Level 4 on the standard scale.
		(b) In any other case—	

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| (i)               | three months or the |
| summarily ... ..  | statutory maximum   |
|                   | or both;            |
| (ii) on           | two years or a fine |
| indictment ... .. | or both.”.          |

(2) Subsection (1) above shall not affect any proceedings in respect of, or the punishment for, an offence committed before that subsection comes into force.

### 36 Servants and agents authorised by fishing licences.

(1) For paragraph 9 of Schedule 2 to the <sup>M40</sup>Salmon and Freshwater Fisheries Act 1975 (persons treated as servants and agents of licensee for the purpose of being entitled to use an instrument under the authority of the licence) there shall be substituted the following paragraph—

- “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 sub-paragraph (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;

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- (b) in the case of a consent for the purposes of sub-paragraph (2)  
 (c) above, where the giving of the consent appears to the water authority to be required by the special circumstances of the case.”
- (2) Accordingly, in section 25(3) of that Act, for the words from “not exceeding” onwards there shall be substituted the words “subject to the provisions of paragraphs 9 to 13 of Schedule 2 to this Act”.

#### Marginal Citations

**M40** 1975 c. 51.

### 37 Byelaws under Sea Fisheries Regulation Act 1966.

- (1) Subject to subsection (3) below, the power of a local fisheries committee to make byelaws under section 5 of the <sup>M41</sup>Sea Fisheries Regulation Act 1966 shall be exercisable for the purposes of protecting salmon and of preventing any interference with their migration and shall be so exercisable as if the references in that section to sea fish included references to salmon.
- (2) Subject to subsection (3) below, the power of a local fisheries committee to make byelaws under the said section 5 shall also include power to make byelaws which for the purposes of section 6 of the <sup>M42</sup>Salmon and Freshwater Fisheries Act 1975 authorise the placing and use of fixed engines at such places in their sea fisheries district, at such times and in such manner as may be prescribed by the byelaws and impose requirements as to the construction, design, material and dimensions of such engines, including in the case of nets the size of mesh.
- (3) A local fisheries committee shall not make byelaws for any purpose mentioned in subsection (1) or (2) above unless [<sup>F7</sup>the National Rivers Authority has] consented to byelaws being made by the committee for that purpose.
- (4) For the purposes of any byelaws made by virtue of this section the references to sea fish in sections 10(2)(c) and 12 of the said Act of 1966 (which include provision with respect to the seizure of, and searches for, sea fish taken in contravention of byelaws) shall be deemed to include references to salmon.
- (5) In this section—  
     “fixed engine” has the same meaning as in the Salmon and Freshwater Fisheries Act 1975; and  
     “salmon” means fish of the salmon species and trout which migrate to and from the sea.

#### Textual Amendments

**F7** Words substituted by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 141, **Sch. 17 para. 9(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)

#### Marginal Citations

**M41** 1966 c. 38.

**M42** 1975 c. 51.

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### 38 Disclosure of information furnished under the Diseases of Fish Act 1983.

In subsection (1) of section 9 of the <sup>M43</sup>Diseases of Fish Act 1983 (disclosure of information obtained in pursuance of section 7 of that Act), after paragraph (c) there shall be inserted the words “or

- (d) for the purpose of enabling a water authority to carry out any of their functions under the 1937 Act.”

#### Marginal Citations

M43 1983 c. 30.

## PART IV

### MISCELLANEOUS

### 39 Review of certain salmon net fishing.

- (1) The Minister of Agriculture, Fisheries and Food and the Secretary of State shall, as soon as practicable after the end of the period of three years beginning with the passing of this Act, prepare a report which, in the context of the need to ensure—
- (a) that sufficient salmon return to spawn in the rivers wholly or partly situated in the areas and districts specified in subsection (3) below; and
- (b) that fishing for salmon by means of nets is properly managed in those areas and districts,
- reviews the nature and extent of all such fishing in those areas and districts.
- (2) A copy of the report prepared under subsection (1) above shall be laid before each House of Parliament.
- (3) The areas and districts referred to in subsection (1) above are the areas of the Yorkshire and Northumbrian water authorities and the salmon fishery districts from the River Forth to the River Ugie, the River Tweed being deemed for the purposes of this section to be included in those areas and districts.

#### Modifications etc. (not altering text)

C4 S. 39(3) amended by Water Act 1989 (c. 15, SIF 130), s. 141, Sch. 17 para. 9(2) (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)

### 40 Interpretation.

- (1) In this Act, unless the context otherwise requires—
- “annual close time order” has the meaning ascribed to it in section 6 (3) of this Act;
- “assessor” means the assessor or depute assessor for a valuation area appointed under section 116 of the <sup>M44</sup>Local Government (Scotland) Act 1973;
- “board” and “district salmon fishery board” mean—

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(a) the committee of an association of proprietors of salmon fisheries within the meaning of section 14 of this Act; or

(b) a transitional district board within the meaning of section 14(8) of this Act;

“coastal limits” means the limits of seacoast fixed for a district under section 6(3) of the <sup>M45</sup>Salmon Fisheries (Scotland) Act 1862;

“designation order” has the meaning ascribed to it in section 1(2) of this Act;

“district” and “salmon fishery district” mean an area described in section 1(1) of this Act or designated as such by a designation order;

“enactment” includes any Act of Parliament, whether public, general, local or private, and any instrument made under any enactment;

“fishery assessment” has the meaning ascribed to it in section 15(2) of this Act;

“fishery” and “salmon fishery” means a salmon fishery in any river or estuary or in the sea;

“inland waters” has the same meaning as in the Salmon and <sup>M46</sup>Freshwater Fisheries (Protection) (Scotland) Act 1951;

“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;

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

“River Tweed” means “the River” as defined by the Tweed Fisheries Amendment Act 1859, as amended by the byelaw made under section 4 of the Salmon Fisheries (Scotland) Act 1863;

“River Tweed Council” means the council constituted under section 6 of the <sup>M47</sup>Tweed Fisheries Act 1969;

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

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

“valuation roll” means a roll made up under section 1 of the <sup>M48</sup>Local Government (Scotland) Act 1975.

(2) In Part I of this Act, “the Salmon Fisheries (Scotland) Acts 1862 to 1868” means—  
the <sup>M49</sup>Salmon Fisheries (Scotland) Act 1862;  
the <sup>M50</sup>Salmon Fisheries (Scotland) Act 1864; and  
the <sup>M51</sup>Salmon Fisheries (Scotland) Act 1868.

(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 *apro 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.

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#### **Marginal Citations**

- M44 1973 c. 65.
- M45 1862 c. 97.
- M46 1951 c. 26.
- M47 1969 c. xxiv.
- M48 1975 c. 30.
- M49 1862 c. 97.
- M50 1864 c. 118.
- M51 1868 c. 123.

#### **41 Amendments and repeals.**

- (1) The enactments mentioned in Schedule 4 to this Act shall have effect subject to the amendments there specified (being minor amendments or amendments consequential on the preceding provisions of this Act).
- (2) Subject to subsections (3) and (4) below, the enactments mentioned in Schedule 5 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) The repeal specified in Schedule 5 to this Act relating to section 13 of the <sup>M52</sup>Salmon Fisheries (Scotland) Act 1868 shall not extend to the River Tweed.
- (4) Notwithstanding the repeal specified in Schedule 5 to this Act relating to the <sup>M53</sup>Salmon Fisheries (Scotland) Act 1863, the byelaw made under section 4 of that Act in respect of the limits of the River Tweed shall continue to have effect; and the repeal of that section shall not affect the legality of any mode of fishing for or taking salmon at any place.

#### **Marginal Citations**

- M52 1868 c. 123.
- M53 1863 c. 50.

#### **42 Crown application.**

- (1) Part I of this Act shall apply to land an interest in which belongs to Her Majesty in right of the Crown and land an interest in which belongs to a government department or is held in trust for Her Majesty for the purposes of a government department, but otherwise this Act shall not bind the Crown.
- (2) In this section, “land” includes salmon fisheries.

#### **43 Citation, commencement and extent.**

- (1) This Act, which may be cited as the Salmon Act 1986, shall, with the exception of the provision mentioned in subsection (2) below, come into force on the expiry of the period of two months beginning with the date on which it is passed.
- (2) Section 21 of this Act shall come into force on such date as the Secretary of State may by order made by statutory instrument appoint, and such an order may include such

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transitional or saving provisions as appear to the Secretary of State to be necessary or expedient in connection with the provision brought into force by the order.

- (3) The provisions of this Act modifying or repealing other enactments except section 38 have respectively the same extent as those other enactments.
- (4) Subject to the application of section 39(1) of the <sup>M54</sup>Salmon and Freshwater Fisheries Act 1975 (border rivers) in relation to section 32 of this Act and the enactments amended by sections 33 to 36 of this Act, sections 31 to 38 of this Act extend to England and Wales only.
- (5) Except as this Act otherwise provides, Parts I and II and section 42 of this Act extend to Scotland only.

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**Subordinate Legislation Made**

**P1** [S. 43\(2\)](#) power fully exercised (17.8.1992): 1.1.1993 appointed for s. 21 by [S.I. 1992/1973](#), **art. 2**.

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**Marginal Citations**

**M54** [1975 c. 51](#).



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## SCHEDULES

### SCHEDULE 1

Sections 2, 6, 7, 8 and 10.

#### PROVISIONS AS RESPECTS THE MAKING OF DESIGNATION ORDERS

##### *Proposals for a designation order*

- 1 The Secretary of State may make a designation order only on the application to him by—
- (a) a district salmon fishery board for a district which would be affected by the proposed order;
  - (b) where there is no such board, two proprietors of salmon fisheries in the area which would be affected by the proposed order; or
  - (c) any number of or combination of such boards or such proprietors in the area which would be affected by the proposed order
- but the Secretary of State may act under this Schedule notwithstanding that the applicants do not represent the whole area which would be affected by the proposed order.
- 2 An application under paragraph 1 above shall be accompanied by the applicant's written proposals which shall state—
- (a) the area which it is proposed should be designated as a salmon fishery district;
  - (b) the salmon fishery district or districts which are, at the time of the application, contained wholly or partly within that area;
  - (c) the reasons for the creation of the proposed salmon fishery district;
  - (d) the proposed dates of the annual close time and the periods within which it shall be permitted to fish for and take salmon by rod and line in the proposed district; and
  - (e) the general effect of the proposals.

##### *Consultation and publication*

- 3 On receiving an application under paragraph 1 above, the Secretary of State shall consult such persons as he considers appropriate and may—
- (a) request from the applicant such additional information as he thinks fit;
  - (b) dismiss the application;
  - (c) proceed in accordance with the remaining provisions of this Schedule.
- 4 (1) Before making a designation order, the Secretary of State shall direct that notice of the general effect of the proposals shall be given, specifying the time (not being less than 28 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the proposals may be made.

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- (2) Notice shall be given at least once in each of two successive weeks by advertising in a newspaper circulating in the district or districts affected by the proposals.
  - (3) The cost of giving notice shall be met by the applicant under paragraph 1 above.
- 5        At any time, the Secretary of State may alter the proposals in such way as he thinks fit and shall consider whether such alterations are sufficient to require—
- (a) further consultation as mentioned in paragraph 3 above; and
  - (b) further notice to be given under paragraph 4 above.

#### *Making of order*

- 6        If no representations or objections are duly made, or if all so made are withdrawn, the Secretary of State may make a designation order.
- 7        (1) If any representation or objection duly made is not withdrawn, the Secretary of State may, after considering the same—
- (a) make a designation order;
  - (b) dismiss the application; or
  - (c) cause a local inquiry to be held.
- (2) The Secretary of State shall appoint a person to hold the inquiry and to report thereon to him.
  - (3) Notification of the time when and the place where the inquiry is to be held shall be sent to any person who has duly made and has not withdrawn representations about or objections to the proposals, and shall be published at least once in each of two successive weeks in a newspaper circulating in the district or districts affected by the proposals.
  - (4) The person appointed to hold the inquiry may administer oaths and examine witnesses on oath and may accept, in lieu of evidence on oath by any person, a statement in writing by that person.
  - (5) The Secretary of State may make orders as to the expenses incurred by him in relation to the inquiry (including such reasonable sum as he may determine for the services of the person appointed to hold the inquiry) and as to the expenses incurred by the parties to the inquiry and as to the parties by whom such expenses shall be paid.
  - (6) Any order of the Secretary of State under sub-paragraph (5) above requiring any party to pay expenses may be enforced in like manner as a recorded decree arbitral.
- 8        After considering the report of the person appointed to hold the inquiry in pursuance of paragraph 7 above and any representations or objections which were duly made, the Secretary of State may make a designation order.
- 9        The power to make a designation order shall be exercisable by statutory instrument.

## SCHEDULE 2

Sections 14, 16 and 18.

## ELECTION AND CO-OPTION OF MEMBERS OF DISTRICT SALMON FISHERY BOARDS

## PART I

## MEETING OF QUALIFIED PROPRIETORS

*Calling of meeting*

- 1 (1) Where there is no district salmon fishery board or transitional district board for a district, the sheriff shall, on the application of two qualified proprietors of salmon fisheries in the district,—
- (a) make up a roll of upper and lower proprietors in the district to which the application relates;
  - (b) call a meeting of these proprietors, at such time and place as he may direct, for the purpose of forming an association of proprietors of salmon fisheries for that district and electing a committee to become the district salmon fishery board for that district; and
  - (c) give notice at least once in each of two successive weeks by advertising in a newspaper circulating in the district of the date, time and place of that meeting.
- (2) Where proposals for a designation order have been considered by the Secretary of State, in accordance with Schedule 1 to this Act, and he considers that a designation order should be made—
- (a) the clerk or, acting jointly, the clerks to the district salmon fishery boards or transitional district boards for any district or districts which would be superseded by the proposed designation order shall perform, in respect of the proposed district, the duties specified in sub-paragraph (1) above; or
  - (b) where there is no district salmon fishery board for any district which would be superseded by the proposed designation order, the sheriff shall perform the duties specified in sub-paragraph (1) above on the application of two proprietors of salmon fisheries in the proposed district
- and the following provisions of this Schedule shall have effect in respect of the proposed district as if it had been designated.
- (3) Where the salmon fishery district lies in more than one sheriffdom, the sheriff in whose jurisdiction lies the major part of that district may, for the purposes of this Schedule, perform the duties specified in sub-paragraph (1) above in an adjacent sheriffdom.
- (4) The sheriff may recover from the committee formed in accordance with this Schedule all expenses incurred by him in the performance of his duties under this paragraph, whether or not that committee becomes a district salmon fishery board, but if it does become such a board, these expenses may be met out of the fishery assessment.
- 2 (1) At a meeting of proprietors called—
- (a) by the sheriff under paragraph 1 above;
  - (b) by the clerk to a board in accordance with section 18(1) of this Act; or
  - (c) by the clerk to a transitional district board in accordance with paragraph 7(a) of Schedule 3 to this Act,

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the proprietors present shall elect or, as the case may be, re-elect a committee to act on behalf of the association.

- (2) If—
- (a) the membership of that committee is in accordance with Part II of this Schedule; and
  - (b) the requirements of this Part as respects eligibility are met
- that committee shall be or continue to be the district salmon fishery board for that district.
- (3) Membership of such a committee, whether or not it is a district salmon fishery board, shall not affect eligibility for membership of any other such committee or board.

#### *Election of members*

- 3
- (1) The meeting shall elect from amongst the qualified proprietors present a person to be chairman of the committee.
- (2) In accordance with the following provisions of this Part of this Schedule, representatives of qualified proprietors shall then be elected by—
- (a) the upper proprietors from amongst themselves; and
  - (b) the lower proprietors from amongst themselves
- but an election under this sub-paragraph shall not be held invalid for the sole reason that there was only one upper or, as the case may be, lower proprietor present.
- (3) A qualified proprietor shall have, in respect of each fishery he owns within the district, one vote in an election under this paragraph and shall have one additional vote for each £5,000 or part thereof by which the value of that fishery as entered in the valuation roll exceeds £5,000 but, subject to sub-paragraph (5) below, no proprietor shall have more than four votes in total as respects each fishery.
- (4) A proprietor of a salmon fishery in the district which has been neither entered nor entered separately in the valuation roll shall, notwithstanding anything to the contrary, have one vote at the meeting and shall be eligible for election.
- (5) A person who is both an upper and a lower proprietor by virtue of section 11(5) of this Act shall count as both an upper and as a lower proprietor for the purposes of this paragraph and he may both vote and be elected in each capacity.

#### *Balance between upper and lower proprietors*

- 4
- (1) In the election of representatives of qualified proprietors, not more than three may be elected by upper proprietors and not more than three may be elected by lower proprietors.
- (2) Where there are less than three proprietors in the district qualified as upper proprietors or less than three qualified as lower proprietors, the number elected from either category shall not exceed the number eligible for election in the other category.
- (3) If the person elected as chairman is—

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- (a) an upper proprietor and there are less than four upper proprietors in that district; or
- (b) a lower proprietor and there are less than four lower proprietors in that district,

he shall also be eligible for election as a representative of qualified proprietors and, if elected, may act as such in addition to acting as chairman.

- (4) In calculating the numbers of upper and lower proprietors, a person who is both an upper and a lower proprietor by virtue of section 11(5) of this Act shall be counted in each capacity in which he has been elected.

#### *Co-optees*

- 5 (1) In the co-opting of representatives of salmon anglers and of tenant netsmen under Part II below, the number of representatives of salmon anglers shall equal the number of representatives of tenant netsmen but that number shall be no more than three and shall not exceed—
- (a) the number of proprietors in the district qualified as upper proprietors; or
  - (b) the number of proprietors in the district qualified as lower proprietors,
- whichever is the smaller number of qualified proprietors.
- (2) A person who is both an upper and a lower proprietor by virtue of section 11(5) of this Act shall be counted in each capacity for the purposes of sub-paragraph (1) above.
- (3) A representative of salmon anglers shall be a person whom the board consider to be representative of persons angling for salmon in the district but who is not himself an upper proprietor in that district.
- (4) Before co-opting a person as a representative of salmon anglers, the board shall consult such organisations representing salmon anglers in the district as they think fit; but this requirement shall not apply to the filling of a vacancy in accordance with section 18(5) of this Act.
- (5) A representative of tenant netsmen shall be—
- (a) a tenant netsman in the district who is not a lower proprietor in that district;
  - (b) a tenant netsman in the district who is a lower proprietor in that district if—
    - (i) there are insufficient tenant netsmen who are qualified or willing to be co-opted and who are not also lower proprietors in that district; and
    - (ii) he has not been elected to the board of that district as a representative of lower proprietors or as chairman; or
  - (c) a lower proprietor in the district who is not a tenant netsman in that district if—
    - (i) there are insufficient tenant netsmen qualified or willing to be co-opted, whether or not they are also lower proprietors in that district; and
    - (ii) he has not been elected to the board of that district as a representative of lower proprietors or as chairman,

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but a person shall not be disqualified under this sub-paragraph solely because he is an upper proprietor in that district or has been elected to the board of that district as a representative of upper proprietors.

## PART II

### MEMBERSHIP

- 6 (1) The members of the committee shall be members of a district salmon fishery board if the committee consists of the following persons—
- (a) an elected chairman; and
  - (b) in addition to the chairman, not more than six elected representatives of qualified proprietors in the district
- and a person who is both an upper proprietor and a lower proprietor by virtue of section 11(5) of this Act may be elected in either capacity or in both capacities.
- (2) As soon after the meeting of proprietors referred to in Part I above as is practicable, the chairman and the elected representatives of qualified proprietors shall, in accordance with the provisions of this Schedule co-opt representatives of salmon anglers and tenant netmen in the district as required by section 16(2) of this Act.
- (3) The members of a district salmon fishery board shall be—
- (a) the persons mentioned in sub-paragraph (1) above;
  - (b) not more than three co-opted representatives of salmon anglers in the district; and
  - (c) not more than three co-opted representatives of tenant netmen in the district
- but a committee shall not fail to be a district salmon fishery board only by reason that no persons or not enough persons have been co-opted in accordance with this paragraph if—
- (i) there has been insufficient time to co-opt such persons; or
  - (ii) no persons or not enough persons are willing to be co-opted.

## SCHEDULE 3

Section 14(8).

### TRANSITIONAL DISTRICT BOARDS

- 1 Subject to the provisions of this Schedule, a transitional district board within the meaning of section 14(8) of this Act shall be deemed to be a district salmon fishery board and have the powers and duties of such a board and references to a district salmon fishery board shall, unless the context otherwise requires, include references to a transitional district board.
- 2 (1) Sections 16(2) and 18 of this Act shall not apply to a transitional district board, which may retain the membership which it had at the commencement of section 14 of this Act.
- (2) Subject to paragraph 3 below, vacancies on that board may be filled by the board by an upper or, as the case may be, lower proprietor within the meaning of this Act.

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- (3) The chairman or a member of a transitional district board may authorise a person to act for him as chairman or as such a member.
- 3 The chairman of a transitional district board shall be the proprietor whose salmon fishery or, taken together, fisheries in that district has or have the greatest value entered in the valuation roll.
- 4 The clerk to a transitional district board shall prepare a new roll of upper and lower proprietors in that district in accordance with section 11 of this Act so as to include in the roll any proprietors who were not proprietors of salmon fisheries in that district immediately before the commencement of section 14 of this Act.
- 5 (1) A transitional district board may continue to collect the whole or any outstanding part of the fishery assessment imposed under section 23 of the <sup>M55</sup>Salmon Fisheries (Scotland) Act 1862 from proprietors of fisheries on which that assessment had been imposed before the commencement of section 14 of this Act.
- (2) On the expiry of the period of the fishery assessment mentioned above, the board may levy a fishery assessment under section 15 of this Act but only in respect of fisheries in the district on which that assessment had been imposed before the commencement of section 14 of this Act.
- (3) The board may recover arrears of fishery assessment, whether due before or after the commencement of section 14 of this Act, by action for payment of money.
- (4) The power under subparagraph (3) above to recover arrears of fishery assessment includes power to recover interest, chargeable at such rate as the Secretary of State shall, with the consent of the Treasury, determine, on such arrears from—
- (a) in the case of recovery of arrears due before the date of the coming into force of section 14 of this Act which have been outstanding for at least three months from that date, that date; or
- (b) in the case of recovery of arrears due in respect of an assessment imposed by a transitional district board which have been outstanding for at least three months from the date of issue of a notice of assessment, that date
- until payment or the commencement of an action for payment, whichever is the earlier.

**Marginal Citations**

**M55** 1862 c. 97.

- 6 A transitional district board shall cease to be deemed a district salmon fishery board and shall cease to have such powers and duties on the expiry of—
- (a) three years from the date of the last meeting of proprietors within the meaning of sections 18 or 24 of the <sup>M56</sup>Salmon Fisheries (Scotland) Act 1862 or section 3 of the <sup>M57</sup>Salmon Fisheries (Scotland) Act 1868; or
- (b) six months from the date of the commencement of section 14 of this Act, whichever is later.

**Marginal Citations**

**M56** 1862 c. 97.

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**M57** 1868 c. 123.

- 7 At any time within the periods specified in paragraph 6 above, the clerk to a transitional district board shall, on the instructions of the board,—
- (a) call a meeting of the upper and lower proprietors of the district, at such time and place as the board may direct, for the purpose of forming an association of proprietors of salmon fisheries for that district and electing a committee to become the district salmon fishery board for that district; and
  - (b) give notice at least once in two successive weeks by advertising in a newspaper circulating in the district of the date, time and place of that meeting.
- 8 Notwithstanding paragraph 6 above, a transitional district board shall cease to be deemed a district salmon fishery board and shall cease to have the powers and duties of a transitional district board on the election in accordance with Schedule 2 to this Act of a committee of an association of proprietors within the meaning of section 14 of this Act.
- 9 The assets and liabilities of a district board within the meaning of the Salmon Fisheries (Scotland) Acts 1862 to 1868 shall be transferred to the transitional district board for that district and, likewise, the assets and liabilities of a transitional district board shall be transferred to the district salmon fishery board for that district whenever such a board is elected.

## SCHEDULE 4

Section 41.

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *Salmon Fisheries (Scotland) Act 1868 (c. 123.)*

- 1 After section 1 of the Salmon Fisheries (Scotland) Act 1868 there shall be inserted the following section—

**“1A Expressions used in this Act.**

In this Act, unless the context otherwise requires the expressions “board” or “district salmon fishery board”, “district” or “salmon fishery district”, “fishery”, “proprietor”, “salmon” and “river” shall have the meanings ascribed to them in section 40(1) of the Salmon Act 1986 (interpretation).”.

- 2 In section 11 of that Act (application to streams not frequented by salmon), for the words “mill dams” there shall be substituted the words “dams, including mill dams”.
- 3 (1) In section 18 of that Act (offence of buying, selling, possessing etc. of salmon roe), the words from “uses” to “purposes, or” shall be omitted.
- (2) In section 19 (offences in relation to young salmon, salmon spawn, spawning beds etc.), the words from “for the purpose” in the second place where they occur to “purpose, or” shall be omitted.
- (3) In section 20 (offences in relation to unclean or unseasonable salmon), the words from “or to any person” onwards shall be omitted.



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4 In the said section 19, for the word “wilfully” there shall be substituted the word “knowingly”.

5 In section 41 of that Act (extent), the words from “and Schedule G” to “Schedule” shall be omitted.

*Diseases of Fish Act 1937 (c.33)*

6 In subsection (3) of section 8 of the Diseases of Fish Act 1937 (penalties and legal proceedings) for the words after “be” there shall be substituted the words “proceeded against and punished in Scotland”.

*Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (c. 26)*

7 In section 1 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (prohibition of poaching), for the words “low water mark” there shall be substituted the words “mean low water springs”.

8 Section 9 of that Act (saving for acts done for scientific and other purposes) shall be renumbered as subsection (1) of that section and—

(a) in that subsection the words from “or”, or where fourthly occurring, onwards shall cease to have effect; and

(b) after that subsection there shall be added the following subsection

“(2) This section does not apply to an act relating to salmon.”.

9 In section 15(1)(c) of that Act (power of Secretary of State to conduct inquiries and to obtain information), the words from “so as to show” to the end of that subsection shall be omitted.

10 In section 19(2) of that Act (forfeitures) the words “on indictment” shall be omitted.

11 In section 22 of that Act (provisions as to River Tweed), for the reference to the Board of Commissioners of the River Tweed there shall be substituted a reference to the council constituted under section 6 of the <sup>M58</sup>Tweed Fisheries Act 1969.

**Marginal Citations**

**M58** 1969 c. xxiv.

12 In section 24 of that Act (interpretation), for the entries relating to “District” and “District Board” there shall be substituted the following entries—

““District” and “Salmon Fishery District” shall be deemed to include the River Tweed;

“District Board” and “District Salmon Fishery Board” shall include the council constituted under section 6 of the Tweed Fisheries Act 1969;”.

*Salmon and Freshwater Fisheries Act 1975 (c. 51)*

13 In section 39 of the Salmon and Freshwater Fisheries Act 1975 (Border rivers and Solway Firth), after subsection (4) there shall be added the following subsection—

“(5) Nothing in this section shall authorise a water authority to take legal proceedings in Scotland in respect of an offence against this Act.”.

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- 14 In section 43(3) of that Act (Scottish extent), for the words “and (4)” there shall be substituted the words “(4) and (5)”.

*Freshwater and Salmon Fisheries (Scotland) Act 1976 (c. 22)*

- 15 (1) In section 7(5) of the Freshwater and Salmon Fisheries (Scotland) Act 1976 (fish farmers to be exempted from certain offences)—
- (a) the word “4” shall be omitted; and
  - (b) after the word “8” there shall be inserted the words “, 8A”.
- (2) In Part I of Schedule 3 to that Act (offences from which fish farmers are to be exempted)—
- (a) paragraph 4 shall be omitted; and
  - (b) after paragraph 8 there shall be inserted the following paragraph—
- “(8A) In the Salmon Act 1986, regulations made under section 3(2)(a) or (d) (general regulations).”.

SCHEDULE 5

Section 41.

REPEALS

Chapter	Short title	Extent of repeal
1696 c. 35 (S.).	Salmon Act 1696.	The whole Act.
25 & 26 Vict. c. 97.	Salmon Fisheries (Scotland) Act 1862.	The whole Act.
26 & 27 Vict. c. 10.	Salmon Acts Amendment Act 1863.	The whole Act.
26 & 27 Vict. c. 50.	Salmon Fisheries (Scotland) Act 1863.	The whole Act.
27 & 28 Vict. c. 118.	Salmon Fisheries (Scotland) Act 1864.	The whole Act.
31 & 32 Vict. c. 123.	Salmon Fisheries (Scotland) Act 1868.	The whole Act except sections 1, 11, 15, 18 to 24, 26, 27, 29, 31 to 36 and 41.
33 & 34 Vict. c. 33.	Salmon Acts Amendment Act 1870.	The whole Act.
45 & 46 Vict. c. 78.	Fishery Board (Scotland) Act 1882.	The whole Act.
14 & 15 Geo. 6. c. 26.	Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951.	Section 14.
		In section 19(2) the words “on indictment”.

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