

*Draft Order in Council laid before Parliament and the Scottish Parliament under section 115 of, and paragraphs 1 and 2 of Schedule 7 to, the Scotland Act 1998 for approval by resolution of each House of Parliament and of the Scottish Parliament. This Draft Order supersedes the Draft laid on 9th December 2004.*

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DRAFT STATUTORY INSTRUMENTS

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**2006 No.**

**CONSTITUTIONAL LAW  
DEVOLUTION, SCOTLAND  
RIVER, SCOTLAND  
RIVER, ENGLAND AND WALES**

**The Scotland Act 1998 (River Tweed) Order 2006**

*Made*        -        -        -        -        2006

*Coming into force*        -        -        2006

At the Court at        , the \*\* day of \*\* 2006

Present,

The Queen's Most Excellent Majesty in Council

This Order is made by Her Majesty in Council in exercise of the powers conferred upon Her by sections 111, 112(1) and 113 of the Scotland Act 1998(1).

In accordance with section 115 of, and paragraphs 1 and 2 of Schedule 7 to, that Act, a draft of this Order was—

- (a) laid before and approved by a resolution of each House of Parliament; and
- (b) laid before and approved by a resolution of the Scottish Parliament.

Accordingly, Her Majesty, by and with the advice of Her Privy Council, makes the following Order:

## PART 1

### ADMINISTRATION

#### **Citation, commencement, application and extent**

- 1.—(1) This Order may be cited as the Scotland Act 1998 (River Tweed) Order 2006.
- (2) This Order shall come into force on the day after the day on which it is made.
- (3) This Order applies only to the Tweed district.
- (4) Part 4 extends only to Scotland and Part 5 extends only to England and Wales.
- (5) The amendments contained in Part 1 of Schedule 4 have the same extent as the enactments amended.

#### **Definition of the Tweed district**

- 2.—(1) In this Order, “the Tweed district” means the district described in paragraphs (2) to (8).
- (2) The coastal limit of the district in the north is high water mark on the boundary between the local government areas of East Lothian and Scottish Borders (“the northern coastal limit”).
- (3) The coastal limit of the district in the south is grid reference NU 0783243378 (“the southern coastal limit”).
- (4) The district extends landward to include the catchment area of every river which flows directly or indirectly into the sea between the northern coastal limit and the southern coastal limit.
- (5) The district includes the southern seaward sector and the northern seaward sector.
- (6) The southern seaward sector is the area bounded by—
  - (a) in the west, a straight line between high water mark on the boundary between Scotland and England and the southern coastal limit;
  - (b) in the south, a straight line extending 8 kilometres seaward from the southern coastal limit, and at right angles to the line described at sub-paragraph (a);
  - (c) in the north, a straight line extending 8 kilometres seaward from high water mark on the boundary between Scotland and England, and at right angles to the line described at sub-paragraph (a); and
  - (d) in the east, a straight line joining the seaward ends of the lines described at sub-paragraphs (b) and (c) (and parallel to the line described at sub-paragraph (a)),and includes any water lying to the west of the line described in sub-paragraph (a).
- (7) The northern seaward sector is the area bounded by—
  - (a) in the south, the line described at paragraph (6)(c);
  - (b) in the north, a line extending 8 kilometres seaward from the northern coastal limit, along a bearing of 026 degrees true from that point;
  - (c) in the west, the line of the coast at high water mark between the northern coastal limit and high water mark on the boundary between Scotland and England; and
  - (d) in the east, a line between the seaward ends of the lines described at sub-paragraphs (a) and (b), and parallel to the line described in sub-paragraph (c).
- (8) The district includes the fishery known as the Holy Island station of the Goswick Fisheries.

## Definition of Estuary Limits

3.—(1) For the purposes of this Order “estuary limits” means the limits which divide each river including its mouth or estuary from the sea.

(2) The estuary limits of a river shall be the limits fixed and defined—

- (a) in relation to the Tweed, by paragraphs (3) and (4); and
- (b) in relation to other rivers in the district, by an estuary limits order made under paragraph (5),

and, where no such limits are fixed for a river as provided for in this article, the estuary limits of a river shall be the natural limits which divide a river (including its mouth or estuary) from the sea.

(3) The coastal limits of the estuary of the Tweed are, in the north, high water mark on the boundary between Scotland and England and, in the south, grid reference NU 0483246702.

(4) The estuary limits of the Tweed (which may be referred to as “the Mouth of the Tweed”) are formed by—

- (a) in the north, the line described in article 3(5)(c);
- (b) in the south, a line running from grid reference NU 0483246702, parallel to the line described in article 3(5)(b), and extending seaward to the line described in article 3(5)(d); and
- (c) in the east, the straight line between the seaward ends of the lines described in sub-paragraphs (a) and (b).

(5) The Scottish Ministers may, in relation to any other river in the Tweed district, and whether or not any such limits have previously been fixed, by order (in this Order referred to as an “estuary limits order”) prescribe estuary limits for that river.

(6) Paragraphs 1, 2 and 8 to 14 of Schedule 2 shall have effect in relation to the making of an estuary limits order.

(7) Where the estuary limits of any river have been fixed, after consulting the Commission, the Scottish Ministers may, by order, change a reference used in describing estuary limits where the suitability of that reference for that purpose has lessened or ceased; but such an order shall not be an estuary limits order.

## Interpretation

4.—(1) In this Order, unless the context otherwise requires—

“the 2003 Act” means the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003(2);

“the Tweed Acts” means the Tweed Fisheries Act 1857(3), the Tweed Fisheries Amendment Act 1859(4), and the Tweed Fisheries Act 1969(5);

“annual value” means the annual rental value of a specified salmon fishery as entered in the valuation roll;

“boat” includes any craft or vessel used in fishing;

“clerk” means the clerk to the Commission;

“The Commission” has the meaning given in article 5 and “Commissioners” shall be construed accordingly;

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(2) 2003 asp 15.

(3) 1857 c.xlviii.

(4) 1859 c.lxx.

(5) 1969 c.xxiv.

“dam” means any weir, dam, dyke, cauld, mill dam or other structure constructed in the bed of any stream, river or loch for the purpose of controlling, impounding or diverting water therefrom;

“Environment Agency” has the meaning given by section 1 of the Environment Act 1995<sup>(6)</sup>;

“estuary limits” has the meaning given in article 4;

“fish farm” has the meaning given in section 10(1) of the Diseases of Fish Act 1937<sup>(7)</sup>;

“fixed engine” means any engine, net or trap used for the taking of salmon, other than a sweep net which when in use is hauled through the water continuously and is not allowed to be stationary in the water or to drift with the current;

“foul hooking” means any method of deliberately hooking or attempting to hook a fish other than by inducing the fish to take the hook in its mouth;

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

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

“justice” and “justices” means a justice of the peace or two or more justices of the peace acting for the county, city or place where the matter requiring action by such justice or justices arises;

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

“land” includes land covered by water;

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

“prescribed” means prescribed by an order made by the Scottish Ministers under this Order;

“proprietary Commissioner” means a person who is a Commissioner by virtue of having been elected as a Commissioner under article 7, or who has been deemed as such under article 5(7);

“proprietor” means 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;

“representative Commissioner” has the meaning given in article 7;

“rod and line” has the meaning given in article 26;

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

“salmon fishery district” has the meaning given in section 34 (salmon fishery districts) of the 2003 Act;

“specified salmon fishery” means a salmon fishery in the district—

- (a) of an annual value of not less than £30; or
- (b) which extends to 800 metres in length where such fishery is on one side only of a river or 400 metres in length where such fishery comprehends both sides of a river; or
- (c) the proprietor of which has elected, by notice in writing to the Commission, that he wishes the fishery to be treated as a salmon fishery of an annual value of £30;

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(6) 1995 c. 25.

(7) 1937 c. 33. Section 10(1) was amended by the Diseases of Fish Act 1983 (c. 30), section 4(3).

“treasurer” means the treasurer to the Commission;

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

“the Tweed district” has the meaning given in article 3, and “district” shall be construed accordingly;

“valuation roll” means the valuation roll prepared by the Commission under article 16;

“vehicle” means any conveyance other than a vehicle used for the purposes of a public passenger transport service within the meaning given in section 63(10) of the Transport Act 1985<sup>(8)</sup>;

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

- (a) the Commission under article 12(b); or
- (b) by the Scottish Ministers under article 60(5).

(2) References to an occupier of a right of fishing for freshwater fish are references to a person who is in possession of that right as tenant under a lease of land to which such a right pertains or under a contract which by virtue of article 74 is deemed to be a lease and, for the purposes of this paragraph “tenant” and “lease” include “subtenant” and “sublease” respectively.

### **The River Tweed Commission**

5.—(1) There shall be a body corporate to be known as the River Tweed Commission, (“the Commission”).

(2) The Commission shall comprise—

- (a) every proprietor of a specified salmon fishery who has been elected as a proprietary Commissioner in accordance with article 6; and
- (b) every person appointed as a representative Commissioner in accordance with article 7.

(3) Property may be held by the Commission in the name of the River Tweed Commission.

(4) Any property, rights or powers held or obligations incumbent upon the Commissioners appointed under the Tweed Acts whether by, under or by virtue of any enactment, rule of law or otherwise shall be transferred to and held by, or as the case may be incumbent upon, the Commission.

(5) Any interest of the Commissioners in any civil proceedings pending before any court or tribunal immediately before the date on which this Order comes into force shall on that date transfer to, and be exercisable by, the Commission.

(6) The Commission may sue or be sued in the name of the clerk or, in the absence of the clerk, of any three named Commissioners.

(7) Proprietary Commissioners holding office as members of the council under section 6 of the Tweed Fisheries Act 1969 shall become proprietary Commissioners under article 6 from the date on which this Order comes into force until the first election held under article 6.

(8) Representative Commissioners appointed under section 5 of that Act shall continue in office from the date on which this Order comes into force as if appointed under article 7.

### **Election of Proprietary Commissioners**

6.—(1) On or before the first Monday in March in each year, a meeting of the proprietors of specified salmon fisheries shall be held within the former burgh of Kelso or at such other place within the district as the Commission may decide for the purpose of electing thirty-eight of their number as proprietary Commissioners.

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(8) 1985 c. 67.

(2) At every such meeting—

- (a) the proprietors present shall elect one of their number to be the convener; and
- (b) each proprietor present shall have one vote, except that in the case of an equality of votes the convener shall be entitled to a second or casting vote.

(3) Each person elected in accordance with the provisions of paragraph (1) shall hold office as a proprietary Commissioner for the ensuing year unless that person shall previously die, resign, become disqualified or otherwise cease to be a proprietor.

(4) If any vacancy shall arise in the office of a proprietary Commissioner the remaining proprietary Commissioners shall select a proprietor of a specified salmon fishery to fill the vacancy and the person so selected shall be entitled to hold office as a proprietary Commissioner so long only as the Commissioner in whose stead that person is elected would have been entitled to have continued in office.

(5) For the purposes of this article, “proprietor” includes not more than one person authorised by—

- (a) in the case of a fishery in which more than one person has a pro indiviso share, such persons; or
- (b) in the case of a fishery in which the rights to that fishery are shared by more than one person in any other way, such persons,

but in neither case does it include, except by virtue of this paragraph, a person whose right to that fishery is so shared.

### **Representative Commissioners**

7.—(1) Each of the local authorities specified in column 1 of Schedule 1 shall appoint the respective number of representatives specified in column 2 of that Schedule to act as representative Commissioners for the purposes of this Order, and each such Commissioner shall hold office from the date of appointment until the period of appointment ends, or that person shall die, resign, become disqualified or otherwise cease to be a Commissioner.

(2) A person appointed to act as a representative Commissioner by a local authority need not be a member or officer of the local authority by whom that representative is appointed.

(3) The representatives appointed as Commissioners by a local authority shall be persons appearing to the local authority to be persons sufficiently representing the interests of those respective parts of the area of that local authority as are specified in column 3 of Schedule 1, and the number of persons appointed in respect of each part so specified shall be in accordance with the respective numbers specified in column 4 of that Schedule.

(4) Of the representatives appointed in respect of each specified part of the area of a local authority, the respective number specified in column 5 of Schedule 1 shall be persons appearing to the local authority to be persons sufficiently representing the interests of freshwater fishing associations or clubs within that part.

(5) If any vacancy shall arise in the office of a representative Commissioner, the local authority in whom the appointment is vested shall as soon as practicable appoint another person to act as a Commissioner.

(6) All appointments under this article shall be made in writing and may be for such period as the local authority in whom the appointment is vested determines.

### **Chief Commissioner and Deputy**

8.—(1) Subject to paragraph (2) at every annual general meeting the Commission shall elect a Chief Commissioner and a deputy from among its number and the persons so elected shall hold office until the next ensuing annual general meeting.

(2) If any vacancy occurs in the office of Chief Commissioner or deputy before the expiration of that person's term of office the Commission shall, as soon as practicable, hold an ordinary meeting for the purpose of filling such vacancy.

(3) The Chief Commissioner or, in the Chief Commissioner's absence, the deputy shall preside at all meetings of the Commission.

(4) Where neither the Chief Commissioner nor the deputy is present at a meeting, a Commissioner elected by the meeting shall preside at that meeting.

### **Functions of the Commission**

9. The Commission may do such acts, execute such works and incur such expenses as may appear to it expedient for—

- (a) the protection or improvement of the salmon and freshwater fisheries in the district;
- (b) the preservation and increase of salmon and freshwater fish in the district; and
- (c) the stocking of the district with salmon and freshwater fish.

### **Application of the seal**

10.—(1) The Commission shall have a seal.

(2) The application of the seal of the Commission shall be authenticated by the clerk or, in the absence of the clerk, by any three Commissioners named by the Commission for this purpose.

(3) Any document which the Commission is authorised or required by or under any enactment to make or issue may be signed on behalf of the Commission by the clerk or any other officer who has been authorised for the purpose, whether generally or specifically, by the Commission or, in the absence of such authorised clerk or officer, by any three Commissioners, named by the Commission for this purpose.

(4) Every document purporting to be an instrument made or issued by or on behalf of the Commission and to be duly executed under the seal of the Commission, or to be signed or executed by a person authorised by the Commission for the purpose, shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

(5) Any notice which is required or authorised, by or under any provision of any enactment or Act of the Scottish Parliament, to be given, served or issued by, to or on the Commission shall be in writing.

### *Officers and Employees*

### **Officers and employees**

11.—(1) On such terms and conditions as it thinks fit, the Commission—

- (a) shall appoint a clerk to the Commission;
- (b) shall appoint a superintendent of water bailiffs, together with such other water bailiffs as it thinks fit;
- (c) may appoint a treasurer to the Commission; and
- (d) may appoint such other persons to act in such capacities as it thinks fit.

(2) No person may hold the offices of clerk and treasurer at the same time.

(3) A person who is employed in any capacity by the Commission shall, for so long as that person is so employed, be disqualified from acting or voting as a Commissioner, or from representing or voting for any Commissioner, at any meeting of the Commission.

(4) Any person employed, immediately before the date on which this Order comes into force, by the Commissioners appointed under the Tweed Acts is transferred on that date to the employment of the Commission.

(5) The contract of employment of any person transferred under paragraph (4)–

(a) is not terminated by the transfer; and

(b) has effect from the date of transfer as if originally made between that person and the Commission.

### *Meetings of the Commission*

#### **Meetings of the Commission**

**12.**—(1) The Commission shall hold an annual general meeting on the first Monday in March or as soon thereafter as practicable every year.

(2) The Commission may hold such ordinary meetings as it may from time to time determine.

(3) The clerk of the Commission shall, on a requisition by any three Commissioners (of whom one must be the Chief Commissioner or the deputy Chief Commissioner) convene a special meeting.

(4) The requisition must state the objects of the meeting and must be signed by the requisitionists.

(5) No special meeting shall be called at less than 48 hours' notice.

(6) All meetings of the Commission shall be held within the former burgh of Kelso or at such other place within the district as it may decide.

#### **Quorum at Commission meetings**

**13.** The Commission shall fix the quorum for any of its meetings at such number, not being less than 9, as it may determine.

#### **Votes at Commission meetings**

**14.**—(1) Every member of the Commission present at any meeting of the Commission shall have one vote, except that, in the case of an equality of votes, the person presiding shall be entitled to a second or casting vote.

(2) All questions arising at any meeting of the Commission shall be decided by a majority of the votes cast by the Commissioners present at the meeting.

(3) It shall be lawful for every Commissioner from time to time to nominate, by instrument in writing under that Commissioner's hand, a person to be proxy for, and represent and act for that Commissioner at any meeting or meetings of the Commission, and the person so nominated shall be entitled, in the absence of the nominating Commissioner, to vote at the meeting or meetings of the Commission for that Commissioner.

(4) No act or proceeding of the Commission shall be questioned on account of any vacancy in its membership and no defect in the qualification or appointment of any person acting as a Commissioner shall vitiate any proceedings of the Commission in which that Commissioner has taken part.

(5) The minutes of any meeting of the Commission shall be signed by the Commissioner presiding at the meeting 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 Commissioners present to have been duly qualified.



## **Expenses**

**15.—**(1) The Commission may defray any travelling or other expenses reasonably incurred by a Commissioner in carrying out any duties on behalf of the Commission.

(2) Any expenses defrayed under paragraph (1) shall not include expenses for attending any meeting of the Commission.

## *Valuation and Finance*

### **Valuation**

**16.—**(1) The Commission shall, not less frequently than every five years, determine the annual value of each salmon fishery in the district, and shall—

- (a) enter that valuation in a valuation roll to be maintained by it for that purpose; and
- (b) intimate the determination to the proprietor or occupier of the salmon fishery concerned.

(2) Any proprietor aggrieved by a determination made under paragraph (1) may, within ten days of receipt of the determination, appeal against that determination to the sheriff or justices, and shall at the same time intimate any such appeal to the clerk.

(3) A sheriff or justice who sustains an appeal made under paragraph (2) shall determine the value of the fishery in question, and the Commission shall adjust the entry in respect of that fishery accordingly.

### **Information for valuation**

**17.—**(1) The Commission shall have power to collect such information as it considers necessary for the purpose of valuing any salmon fishery in the district and to require any proprietor or occupier of a salmon fishery to furnish it with such information in such form and at such times as it may determine.

(2) The Commission may use any information collected under paragraph (1) for the purposes of carrying out its functions under article 9.

(3) Any proprietor or occupier of a fishery who wilfully refuses to comply with any requirement made in pursuance of this article or makes any statement in relation to such a requirement which is false in a material particular shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) The Scottish Ministers may make available to the Commission for the purposes of valuations under this article any information collected by them under article 22 insofar as such information relates to fisheries in the district.

### **Fishery Assessment**

**18.—**(1) The Commission shall have power to impose an assessment to be known as the fishery assessment on each specified salmon fishery in the district.

(2) The fishery assessment shall be assessed at such uniform rate as is determined for all specified salmon fisheries in the district by the Commission and shall be exigible according to the valuation as entered in the valuation roll.

(3) The Commission shall intimate a notice of assessment made under paragraph (1) to the proprietor or occupier of a specified salmon fishery.

## **Enforcement**

**19.**—(1) Proceedings for the recovery of money owed to the Commission in respect of arrears of fishery assessment may be taken before the court having jurisdiction over—

- (a) the area in which the fishery is situated; or
- (b) the place where the debtor lives or is found.

(2) The powers under paragraph (1) to recover arrears of fishery assessment include power to recover interest, chargeable at such rate as the Scottish Ministers may determine on such arrears from, in the case of recovery of arrears which have been outstanding for at least 3 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.

## **Annual report**

**20.** Each year, the Commission shall prepare—

- (a) a general report of its activities over the past year; and
- (b) a statement of accounts, which shall be audited,

and the clerk shall call a meeting of the proprietors of specified salmon fisheries for the purposes of considering the report and the audited accounts.

## *Miscellaneous*

## **Power to conduct inquiries and to obtain information**

**21.**—(1) For the purpose of protecting and developing stocks of salmon and freshwater fish in the Tweed district the Scottish Ministers and the Commission shall have power, jointly or severally, to conduct inquiries and investigations into questions of practical or scientific importance to salmon and freshwater fisheries; and for such purpose to enter on and conduct such operations as may be necessary in any fishery in the Tweed district, provided always that no damage shall be done to such fishery and that no interference shall be caused to the rights of the owner or occupier of such fishery.

(2) The Scottish Ministers shall have power—

- (a) to collect such statistics relating to the number of salmon caught in any salmon fishery and the species, description and weight, and method and date of capture of such salmon as they may consider necessary, and to require any proprietor or occupier of a salmon fishery to furnish them with such statistics relating to such matters in such form and at such times as they may determine; and
- (b) to publish such statistics in such manner as they think fit.

(3) Any proprietor or occupier of a fishery who wilfully refuses to comply with any requirement made in pursuance of this article, or makes any statement in relation to such a requirement which is false in a material particular, shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## PART 2

### METHODS OF FISHING AND OFFENCES RELATED TO FISHING

#### *Methods of fishing*

##### **Methods of fishing: salmon**

**22.**—(1) Any person who fishes for or takes salmon in any inland waters, except by—

- (a) rod and line; or
- (b) net and coble,

shall be guilty of an offence.

(2) Any person who fishes for or takes salmon in any waters other than inland waters except by—

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

shall be guilty of an offence.

(3) Any person who attempts to commit or who does any act preparatory to the commission of an offence mentioned in this article shall be guilty of an offence, and liable to the same punishment as if that person had committed the offence mentioned.

(4) For the purposes of this article “net and coble” and “bag net, fly net or other stake net” shall be construed in accordance with any orders made under article 53(4).

(5) A person found guilty of an offence under this article shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

##### **Methods of fishing: freshwater fish**

**23.**—(1) Subject to paragraphs (3) and (4), any person who fishes for or takes freshwater fish in any inland waters except by rod and line shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) Any person who attempts to commit or who does any act preparatory to the commission of the offence mentioned in paragraph (1) shall be guilty of an offence, and liable to the same punishment as if that person had committed the offence mentioned.

(3) In any pond or loch where all the owners are agreed, a right of fishing may be exercised by net.

(4) In any inland waters an owner or occupier may fish for or take freshwater fish, other than trout, by net or trap.

##### **Use of landing net**

**24.** For the purposes of articles 23 and 24, it shall be prohibited to use any instrument other than a landing net as auxiliary to the taking of fish by rod and line.

##### **Definition of “rod and line”**

**25.**—(1) In this Order “rod and line” means single rod and line (used otherwise than as a set line or by way of foul hooking) with such bait or lure as is not prohibited by this article or, in relation to fishing for salmon, under article 54 or 54(5)(b).

(2) It is prohibited to use fish roe, fire or light as bait or lure.

### *Offences related to fishing for salmon and freshwater fish*

#### **Prohibition against using explosive and other noxious substances for the destruction of fish**

**26.**—(1) Any person who—

- (a) uses any explosive substance with intent to take or destroy fish in any waters;
- (b) puts any poison or other noxious substance in or near any such waters with intent to take or destroy fish; or
- (c) uses any electrical device with intent to stun or destroy salmon or freshwater fish in any such waters,

shall be guilty of an offence.

(2) Any person who attempts to commit or who does any act preparatory to the commission of an offence mentioned in paragraph (1) shall be guilty of an offence, and liable to the same punishment as if that person had committed the offence mentioned.

(3) A person found guilty of an offence under this article shall be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 3 months or to both such fine and such imprisonment; and
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both a fine and such imprisonment.

#### **Fishing for salmon without right or permission**

**27.**—(1) Any person who without legal right, or without written permission from a person having such right, fishes for or takes salmon in any waters, including any part of the sea within 1.5 kilometres of mean low water springs, shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Any person who attempts to commit or who does any act preparatory to the commission of the offence mentioned in paragraph (1) shall be guilty of an offence, and liable to the same punishment as if that person had committed the offence mentioned.

#### **Illegal fishing by two or more persons acting together**

**28.** If two or more persons acting together do any act which would constitute an offence against article 23, 24 or 28, every such person shall be guilty of an offence under this article, and liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 3 months or to both such fine and such imprisonment; and
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both a fine and such imprisonment.

#### **Taking of dead fish**

**29.**—(1) Without prejudice to section 3 of the Diseases of Fish Act 1937 (powers and duties of fishery boards)(9), any person other than—

- (a) a constable or a water bailiff in the exercise of their respective duties;
- (b) a person authorised in that regard by the Scottish Ministers or the Commission; or
- (c) a person with a right to fish therein or the agent of any such person,

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(9) 1937 c. 33. Section 3 was amended by the Water Act 1973 (c. 37), section 9 and the Diseases of Fish Act 1983 (c. 30), Schedule 2, paragraph 2.

who takes or removes dead fish from any waters, including any part of the sea within 1.5 kilometres of mean low water springs, shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) Any person who attempts to commit or who does any act preparatory to the commission of the offence mentioned in paragraph (1) shall be guilty of an offence, and liable to the same punishment as if that person had committed the offence mentioned.

### **Illegal possession of salmon or trout**

**30.**—(1) Any person who is found in possession of any salmon or trout, or any instrument, explosive, poison or other noxious substance which could be used in the taking of salmon or trout, in circumstances which afford reasonable ground for suspecting that that person has obtained possession of such salmon or trout, or such instrument, explosive, poison or substance as the result or for the purpose of committing an offence against any of the provisions of articles 23, 24, 27, 28, and 29, may be charged with unlawful possession as aforesaid of such salmon or trout, or of such instrument, explosive, poison or substance.

(2) Where the court is satisfied that a person charged under paragraph (1) obtained possession of salmon or trout, or of any instrument, explosive, poison or other noxious substance as the result or for the purpose of committing an offence against any of the provisions of articles 23, 24, 27, 28 and 29, that person may be convicted of unlawful possession as aforesaid and dealt with in like manner as if that person had been convicted of the same offence.

(3) A person who commits an offence under this article may be convicted on the evidence of one witness.

### **Removal of obstructions**

**31.**—(1) If a natural obstruction is preventing or obstructing the free passage of salmon or freshwater fish, the owner or occupier of the land or fishery in or upon which the obstruction is shall, within 14 days of being requested to do so in writing by the clerk or any two Commissioners authorised in that behalf by the Commission, remove or alter the obstruction so as to allow the free passage of fish at all times.

(2) If the owner or occupier of the land or fishery referred to in paragraph (1) fails to remove or alter the obstruction, the Commission may order that such obstruction be removed or altered under the direction of a person to be appointed by the Commission and at the expense of the Commission.

(3) The removal or alteration of an obstruction under paragraph (2) shall be carried out so as to cause the least possible injury to the property in question.

### **Offences in relation to passage of salmon**

**32.**—(1) Any person who does any act for the purpose of preventing salmon from passing through any fish pass, or taking any salmon in its passage through the same, shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) Any person who attempts to commit or who does any act preparatory to the commission of any offence mentioned in paragraph (1) shall be guilty of an offence, and liable to the same punishment as if that person had committed the offence mentioned.

(3) A person who commits an offence under this article may be convicted on the evidence of one witness.

### **Fishing in waters where fishing rights owned by one person**

**33.—**(1) Any person who without legal right, or without permission from a person having such right, fishes in a proper stank or loch shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(2) For the purposes of this article—

“proper stank or loch” means a stank or loch the fishing rights in which are owned by one person; and

“stank” means a reservoir or pond with neither inlet nor outlet sufficient to allow access or egress by fish.

### **Contravention of protection order**

**34.—**(1) Any person who fishes for or takes freshwater fish in contravention of a prohibition contained in a protection order made under article 69 shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Any person who attempts to commit or who does any act preparatory to the commission of the offence mentioned in paragraph (1) shall be guilty of an offence and liable to the same punishment as if that person had committed the offence mentioned.

### *Close times for salmon*

#### **Weekly close time for salmon**

**35.—**(1) The weekly close time for salmon fishing shall be such period of not less than 42 hours, including the whole of Sunday, as may be prescribed.

(2) No person shall fish for or take salmon during Sunday.

(3) No person shall fish for or take salmon during the weekly close time but, subject to paragraph (2), an order under this article may make provision for periods within the weekly close time during which it is permitted to fish for and take salmon by rod and line.

(4) Any person who contravenes this article shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) A person who commits an offence under this article may be convicted on the evidence of one witness.

#### **Annual close time for salmon**

**36.—**(1) Subject to the provisions of this article, the annual close time for salmon fishing—

(a) shall be such continuous period of not less than 153 days as may be prescribed by an order (to be known as an “annual close time order”) under this article; and

(b) shall apply to every mode of fishing for and taking salmon.

(2) An annual close time order may make provision for periods within the annual close time during which it is permitted to fish for and take salmon by rod and line (but only with the artificial fly).

(3) Paragraphs 3, 4 and 8 to 14 of Schedule 2 shall have effect in relation to the making of orders under this article.

### **Fishing for salmon during annual close time**

**37.—**(1) Subject to paragraph (2), any person who fishes for or takes salmon during the annual close time within the meaning of article 36 shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) It shall not be an offence to fish for or take salmon by means of rod and line, with the artificial fly only, at any period within the annual close time when such fishing is permitted by the orders in force in the part of the district in which the fishing occurs.

(3) Any person who attempts to commit or who does any act preparatory to the commission of any offence mentioned in paragraph (1) shall be guilty of an offence, and liable to the same punishment as if that person had committed the offence mentioned.

(4) A person who commits an offence under this article may be convicted on the evidence of one witness.

### **Removal of boats and nets during annual close time**

**38.—**(1) The proprietor or occupier of any salmon fishery shall within 36 hours after the commencement of the annual close time—

- (a) remove and carry from such fishery, and from the landing places and grounds adjacent thereto, all boats, oars, nets, engines and other tackle used or employed by such occupier in taking salmon; and
- (b) effectually secure the same so as to prevent their being used in fishing until the end of the close time,

with the exception of such boats and oars as may be used in angling.

(2) Any proprietor or occupier who fails to comply with the duty imposed by paragraph (1) shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) A person who commits an offence under this article may be convicted on the evidence of one witness.

(4) Nothing in this article applies to—

- (a) any ferry-boat or prevents the continued use of any boat by any owner of land adjoining the river or the owner's family, if the boat has the owner's name painted on it, and is secured, when not in use for lawful purposes, by lock and key;
- (b) the pins fixed in the ground to assist in the support of the stakes or poles of fly nets or other stake nets; or
- (c) the fastenings fixed in rocks for the support of bag nets.

### **Buying and selling salmon in annual close time**

**39.—**(1) Any person who buys, sells, exposes for sale or is in possession of any salmon within the district during the period when the annual close time is in force in the district, shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) It shall be a defence to a prosecution brought under this article for the accused to prove that the salmon was caught lawfully.

(3) The burden of proving that any salmon was caught lawfully shall lie on the person charged with selling, exposing for sale or being in possession of, the salmon.

(4) A person who commits an offence under this article may be convicted on the evidence of one witness.

### *Close time for trout*

#### **Annual close time for trout**

**40.**—(1) The annual close time for trout shall extend from 7th October to 14th March, both inclusive.

(2) Subject to paragraphs (3) and (4), any person who, during the annual close time—

- (a) fishes for or takes trout in any inland waters; or
- (b) is in possession of trout from any inland water,

shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) It shall not be an offence under this article for the owner or occupier of any water where trout are kept in captivity or artificially reared or fed, or any person employed by such an owner or occupier, to take trout from such water during the annual close time—

- (a) for scientific or breeding purposes; or
- (b) for the purpose of removing them or having them removed, alive, to other waters.

(4) It shall not be an offence under this article for a person to whom trout are consigned, whether by sale or otherwise, for the purpose mentioned in paragraph (3)(b), to be in possession of such trout.

### *Offences relating to sale, purchase and possession of salmon and trout*

#### **Unclean salmon**

**41.**—(1) Any person who—

- (a) wilfully takes or fishes for; or
- (b) buys, sells, exposes for sale or is in possession of,

any unclean or unseasonable salmon shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Paragraph (1)(a) does not apply to any person who takes such salmon accidentally and forthwith returns it to the water with the least possible injury.

(3) Any person who attempts to commit or who does any act preparatory to the commission of any offence mentioned in paragraph (1)(a) shall be guilty of an offence, and liable to the same punishment as if that person had committed the offence mentioned.

(4) A person who commits an offence under this article may be convicted on the evidence of one witness.

#### **Salmon roe**

**42.**—(1) Any person who buys, sells, exposes for sale or is in possession of any salmon roe shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Paragraph (1) shall not apply to any person who gives a reason, satisfactory to the court before which that person is charged, for being in possession of salmon roe.

(3) It shall be a defence for a person charged with an offence under paragraph (1) to prove—

- (a) that the roe had been produced in the course of fish farming; or
- (b) that that person believed on reasonable grounds that it had been so produced.



(4) A person who commits an offence under this article may be convicted on the evidence of one witness.

(5) Paragraph (3) is without prejudice to the provisions of paragraph (2) relating to the circumstances in which paragraph (1) does not apply.

(6) For the purposes of this article “fish farming” means the breeding, rearing or cultivating of fish, whether or not for the purpose of producing food for human consumption; but the reference to roe produced by fish farming does not include roe from fish bred, reared or cultivated in captivity which have later been released into the wild.

### **Possessing salmon which have been illegally taken, killed or landed**

**43.—**(1) Any 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 that person to suspect,

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

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

- (a) on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 3 months or to both such fine and such imprisonment; and
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both a fine and such imprisonment.

(3) It shall be a defence in proceedings for an offence under this article to show that no relevant offence had in fact been committed in relation to the salmon.

(4) A person who commits an offence under this article may be convicted on the evidence of one witness.

(5) For the purposes of this article 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,

and, for the purposes of this paragraph, “offence”, in relation to the taking, killing or landing of salmon either in Scotland or in England and 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 article 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.

### **Packages of salmon or trout to be marked**

**44.—**(1) Any person who consigns or sends by any common or other carrier any salmon or trout in a package which is not marked conspicuously on the outside with—

- (a) the word “salmon” or “sea trout” or, as the case may be, “trout”; and
- (b) the name and address of the sender,

shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3.

(2) An authorised person may open any package consigned or sent or brought to any place to be consigned or sent, and suspected to contain salmon or trout.

(3) Where a package opened under paragraph (2) is found to contain salmon or trout and—

- (a) the package is not marked as described in paragraph (1); or
- (b) there is reasonable cause to suspect that salmon or trout contained in any package so marked is being dealt with contrary to law,

an authorised person may detain the package and its contents pending proceedings for an offence against any provision of this Order.

(4) If, before the conclusion of such proceedings as are mentioned in paragraph (3), any salmon or trout detained under that paragraph becomes unfit for human consumption, any authorised person may destroy it, or cause it to be destroyed.

(5) Any person who—

- (a) refuses to allow an authorised person to exercise a power conferred by this article; or
- (b) obstructs any authorised person in the exercise of a power so conferred,

shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) For the purposes of this article an “authorised person” means—

- (a) any constable;
- (b) any water bailiff; or
- (c) any person appointed for the purposes of this article by the Scottish Ministers.

### **Size limit for trout**

**45.**—(1) Subject to paragraph (2), any person who purchases, sells, exposes for sale, consigns for sale, exports or consigns for export—

- (a) trout under 20 centimetres in length; or
- (b) any trout at any time between 1st September and 31st March both inclusive,

shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Nothing in this article shall apply to live trout sold or disposed of for the purpose of stocking any river, loch or water, or for artificial propagation.

### **Young salmon and spawning beds**

**46.**—(1) Any person who—

- (a) knowingly takes, injures or destroys;
- (b) buys, sells, exposes for sale or is in possession of; or
- (c) places any device or engine for the purpose of obstructing the passage of,

any smolt, parr, salmon fry or alevin shall be guilty of an offence.

(2) Any person who knowingly—

- (a) injures or disturbs any salmon spawn; or
- (b) disturbs any spawning bed or any bank or shallow in which the spawn of salmon may be,

shall be guilty of an offence.

(3) Any person who during the annual close time obstructs or impedes salmon in their passage to any such bed, bank or shallow shall be guilty of an offence.

(4) Notwithstanding paragraphs (1) to (3) and subject to paragraph (5), the Commission may, with the consent of all the proprietors of salmon fisheries in any river or estuary, adopt such means as it thinks fit for preventing the ingress of salmon into narrow streams in which they or the spawning beds are from the nature of the channel liable to be destroyed.

(5) Nothing done under paragraph (4) may interfere with any water rights used or enjoyed for the purposes of manufacture, agriculture or drainage.

(6) Any person who attempts to commit or who does any act preparatory to the commission of any offence mentioned in paragraph (1), (2) or (3) shall be guilty of an offence, and liable to the same punishment as if that person had committed the offence mentioned.

(7) A person who commits an offence under this article may be convicted on the evidence of one witness, and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) This article is without prejudice to any powers exercisable by or on behalf of the Environment Agency under the Water Resources Act 1991<sup>(10)</sup> or the Land Drainage Act 1991<sup>(11)</sup>.

#### **Unauthorised introduction of fish or fish eggs into certain waters**

**47.—**(1) A person who intentionally introduces any fish or the eggs or spawn of fish into inland waters 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 article in respect of the introduction of fish or the eggs or spawn of fish into such waters if—

- (a) the Commission has previously consented in writing; or
- (b) the waters constitute or are included in a fish farm.

#### *Exemptions*

#### **Exemption from certain offences of acts done for scientific and other purposes: salmon**

**48.—**(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;
  - (iii) the purpose of conserving any creature or other living thing;
  - (iv) the purpose of cleaning or repairing any dam or mill lade; or
  - (v) the purpose of exercising any right of property in the bed of any river or stream; and
- (b) that person has obtained the previous permission, in writing—
  - (i) if the act or omission is one to which this sub-paragraph applies, of the Commission or of the Scottish Ministers; and
  - (ii) in any other case, of the Scottish Ministers,for the act or omission.

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<sup>(10)</sup> 1991 c. 57.

<sup>(11)</sup> 1991 c. 59.

(2) Paragraph (1)(b)(i) applies if the act or omission referred to in that provision is a contravention of article 23, 27(c), 28 (so far as that article relates to article 22), 29, 30, 42, 43 or 47.

(3) A permission under paragraph (1) shall specify the act or omission permitted and the enactment to which the permission relates.

**Exemption from certain offences in respect of acts done for scientific and other purposes:  
fish other than salmon**

**49.**—(1) A person shall not be guilty of any contravention of a provision specified in paragraph (2) in respect of any act in relation to fish other than salmon, 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) that person has obtained the previous permission, in writing—
  - (i) if the act or omission is one to which this sub-paragraph applies, of the Commission or of the Scottish Ministers; and
  - (ii) in any other case, of the Scottish Ministers.

(2) Paragraph (1)(b)(i) applies if the act or omission referred to in that provision is a contravention of article 24, 27(1)(c), 28 (so far as it relates to article 23), 30, 31, 41 or 46.

(3) A permission under paragraph (1) shall specify the act or omission permitted and the provision to which the permission relates.

**Exemption from certain offences in respect of certain acts in relation to salmon**

**50.**—(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 Scottish Ministers.

(2) The Scottish Ministers may exempt an act or omission under paragraph (1) only if they are satisfied that—

- (a) the proprietor of every affected salmon fishery in the district; and
- (b) the Commission,

have previously consented to it.

(4) In paragraph (2) “affected” means appearing to the Scottish Ministers to be likely to be affected by the exemption.

(5) An exemption under this article—

- (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; and
- (d) shall specify—
  - (i) the limits of the waters to which it relates;
  - (ii) its duration; and
  - (iii) the enactment to which it relates.

## **Exemptions in relation to fish farming**

**51.**—(1) Subject to the provisions of this article, a person shall not be guilty of a contravention of any of articles 23, 24, 27(b) and (c), 36(1) and (3), 38, 39, 40, 41, 46 and 46(1)(b), or orders under article 53(a) and (c), in respect of any act or omission if the act or the omission takes place within, and in the course of the operation of, a fish farm.

(2) There shall be no contravention of sub-paragraph (b) or (c) of article 27, by virtue of paragraph (1), in respect of an act referred to in those paragraphs if, and only if, the act is carried out with the prior permission in writing of the Scottish Ministers.

(3) For the purposes of paragraph (1), the act of selling or exporting fish by or on behalf of a person who has reared the fish in a fish farm shall be deemed to be an act carried out within a fish farm in the course of the operation of that farm.

(4) In any proceedings for an offence under article 39 in relation to a boat or other thing mentioned in that article which is not in a fish farm, it shall be a defence for the person charged with such offence to prove that the act or omission complained of was necessary for the purpose of the operation of a fish farm.

(5) It shall be a defence for a person charged with an offence under article 40, 41(1)(b), 42(b) or 46 to show that that person believed on reasonable grounds that the fish with respect to which the offence is alleged to have been committed were produced by fish farming.

(6) For the purposes of paragraph (5) above “fish farming” means the breeding, rearing or cultivating of fish, whether or not for the purpose of producing food for human consumption; but the reference in that paragraph to fish produced by fish farming does not include fish bred, reared or cultivated in captivity which have later been released to the wild.

## *Regulation of fisheries*

### **General orders**

**52.**—(1) The Scottish Ministers may, after consulting such persons as they consider appropriate, make orders with respect to—

- (a) the due observance of the weekly close time for salmon;
- (b) the construction and alteration of dams or lades or water wheels so as to afford a reasonable means for the passage of salmon or freshwater fish;
- (c) the meshes, materials and dimensions of nets used in fishing for or taking salmon or freshwater fish;
- (d) obstructions in rivers or estuaries to the passage of salmon or freshwater fish;
- (e) the construction, alteration and use for the control of the passage of salmon or freshwater fish of—
  - (i) screens in off-takes from inland waters; and
  - (ii) structures associated with such screens; and
- (f) the marking of boats.

(2) Orders made under sub-paragraph (b) or (e) of paragraph (1) may except from an order or part of an order, any works or any category of works.

(3) The power to make orders under paragraph (1)(c) includes power—

- (a) to make different provision for different parts of the district; and
- (b) to except from the application of an order or part of an order any part of the district specified in the orders.

(4) For the purposes of article 23, and after consulting such persons as they consider appropriate, the Scottish Ministers may by order 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.

(5) Any proprietor or occupier of a salmon fishery at which stake nets, fly nets or bag nets are used who fails, in regard to such nets, to do all acts required by orders made under paragraph (1) for the observance of the weekly close time shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) Any person who attempts to commit or who does any act preparatory to the commission of any offence mentioned in paragraph (5) shall be guilty of an offence, and liable to the same punishment as if that person had committed the offence mentioned.

(7) Any person who contravenes an order made under this article shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(8) A person who commits an offence under this article may be convicted on the evidence of one witness.

#### **Salmon fishing: orders as to baits and lures**

**53.**—(1) Without prejudice to article 55(4)(b) and subject to the provisions of this article, the Scottish Ministers may make orders prohibiting the use of specified baits and lures in the case of fishing for salmon.

(2) The Scottish Ministers may make orders under paragraph (1) only on an application to them made in accordance with paragraph (3) by the Commission.

(3) An application under this article shall be accompanied by the Commission's written proposals which shall state—

- (a) the baits and lures the use of which it is proposed should be prohibited;
- (b) the places to which and the times during which the proposed orders should apply; and
- (c) the reasons for the proposals,

and the application and proposals mentioned in this paragraph may be communicated and stored electronically.

(4) Orders under paragraph (1) 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 or lures, the use of which is prohibited;
- (b) times when the orders apply; and
- (c) areas to which the orders apply.

(5) Paragraphs 8 to 14 of Schedule 2 shall apply, with any necessary modifications, to the making of orders under paragraph (1) as they apply to the making of the orders mentioned in that Schedule.

## *Conservation measures*

### **Salmon conservation orders**

**54.**—(1) The Scottish Ministers may make an order (in this Order referred to as a “salmon conservation order”) if they consider that it is necessary or expedient to do so for the conservation of salmon.

(2) A salmon conservation order shall not be taken to be for something other than the conservation of salmon by reason only that it also has effect in relation to the management of salmon fisheries for exploitation.

(3) In considering whether or not it is necessary or expedient to make a salmon conservation order 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.

(4) A salmon conservation order—

- (a) may be made in relation only to salmon fisheries; and
- (b) subject to paragraph (5)(b), shall not be made in respect of matters in relation to which the Scottish Ministers have power to make orders under any other enactment relating to the management of salmon or freshwater fisheries.

(5) Without prejudice to the generality of the power conferred by this article, a salmon conservation order may—

- (a) specify the type of information about any salmon fishery that the Commission may require from the proprietor of the fishery and the time within which such information shall (if required) be supplied; and
- (b) specify baits and lures for the purposes of the definition of “rod and line” in article 26.

(6) A salmon conservation order may—

- (a) confer upon constables and water bailiffs such additional powers of enforcement as the Scottish Ministers consider necessary or expedient for the conservation of salmon in the district;
- (b) make provision generally in relation to the district, or in relation to any time or season; and
- (c) make different provision for different parts of the district, or for different cases or classes of case.

(7) Any person who—

- (a) acts in contravention of; or
- (b) fails to take any action required of that person by, or to comply with any requirement imposed on that person by,

any provision of a salmon conservation order shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(8) A person who commits an offence under this article may be convicted on the evidence of one witness.

(9) Paragraphs 5 to 14 of Schedule 2 shall have effect in relation to the making of salmon conservation orders.

## *Procedures*

### **Procedure for making certain orders**

**55.** Schedule 2 (which makes provision in relation to the making of certain orders under this Order) shall have effect.

## **PART 3**

### **ENFORCEMENT**

#### *Powers of constables and water bailiffs*

### **Grant of warrant to search premises or vehicles**

**56.**—(1) Any sheriff or justice, upon information on oath that there is probable cause to suspect that—

- (a) a breach of any of the provisions of this Order has been committed; or
- (b) any fish illegally taken, or any illegal nets, engines or other instruments are concealed,

on any premises or in any vehicle, may by warrant under his or her hand authorize and empower any constable or water bailiff to enter such premises or vehicle, if necessary by force, for the purpose of detecting such offence, or such concealed fish or instruments, and to seize all illegal nets, engines or other instruments, or any fish illegally taken, that may be found on such premises or in such vehicle.

(2) A warrant granted under this article—

- (a) may specify the time or times in the day or night at which it may be exercised; and
- (b) shall not continue in force for more than one week from the date on which it is granted.

(3) A person authorised by a warrant issued under paragraph (1) to search any premises or any vehicle may search every person who is found in, or whom he or she has reasonable ground to believe to have recently left or to be about to enter, those premises or that vehicle, as the case may be.

(4) No person shall in pursuance of any search authorised by this article be searched except by a person of the same sex.

### **Powers of constables**

**57.**—(1) A constable who has reasonable grounds for suspecting that an offence against any of the provisions of this Order has been committed, and that evidence of the commission of the offence is to be found in any vehicle, but who considers that by reason of urgency or other good cause it is impracticable to apply for a warrant to search such vehicle, may stop and search that vehicle and any person who is found in, or whom there are reasonable grounds to believe to have recently left or to be about to enter, the vehicle.

(2) A constable who has reasonable grounds for suspecting that an offence against any of the provisions of this Order 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 to, or usually enjoyed with, a dwelling house) but who considers that by reason of urgency or other good cause it is impracticable to apply for a warrant to search such premises, may search them without warrant.

(3) Any constable may exercise any of the powers conferred on a water bailiff by article 60.



(4) No person shall in pursuance of any search authorised by this article be searched except by a person of the same sex.

### **Powers of constables and water bailiffs to enter land**

**58.** Any constable or water bailiff may enter and remain upon any land in the vicinity of any river or of the sea coast during any hour of the day or night for the purpose of—

- (a) preventing a breach of the provisions of this Order; or
- (b) detecting persons guilty of any breach of those provisions.

### **Powers of water bailiffs**

**59.—**(1) Any water bailiff may do all or any of the following:—

- (a) examine any dam, fixed engine or obstruction, or any lade, and for that purpose enter on any land;
- (b) stop and search any boat which is used in fishing or any boat which there is reasonable cause to suspect of containing fish;
- (c) search and examine nets or other instruments used in fishing or any basket, pocket or other receptacle capable of carrying fish, which there is reasonable cause to suspect of containing fish illegally taken; and
- (d) seize any fish, instrument or article, boat or vehicle liable to be forfeited in pursuance of this Order.

(2) A water bailiff who has reasonable grounds for suspecting that an offence against any of the provisions of this Order has been committed and that evidence of the commission of the offence is to be found in any vehicle on any private land adjoining any water within the district or any adjoining salmon fishery district or in any stationary vehicle on a road within the meaning of the Roads (Scotland) Act 1984<sup>(12)</sup>, or a highway within the meaning of the Highways Act 1980<sup>(13)</sup> adjoining such water or such land, may search that vehicle.

(3) Any water bailiff may, in relation to any offence committed or believed to have been committed in the Tweed district, exercise in any adjoining salmon fishery district or Environment Agency region any power which that water bailiff may lawfully exercise in the district; and any water bailiff appointed for the purposes of an adjoining salmon fishery district or Environment Agency region may, in relation to any offence committed or believed to have been committed in such district or, as the case may be, region, exercise in the Tweed district any power which that water bailiff may lawfully exercise in that district or, as the case may be, region.

(4) The production by a water bailiff of the instrument of appointment purporting to be signed on behalf of the Commission (or, as the case may be, on behalf of a district salmon fishery board or the Environment Agency) or of any badge or other device indicating such appointment and purporting to be issued by the Commission (or, as the case may be, on behalf of a district salmon fishery board or the Environment Agency), shall be a sufficient warrant for the exercise of any power conferred on such water bailiff by or under this Order.

(5) The Scottish Ministers may appoint persons as water bailiffs, and the production of the instrument of appointment purporting to be signed by or on behalf of the Scottish Ministers shall be a sufficient warrant for the exercise of any power conferred on water bailiffs by or under this Order.

(6) It shall be lawful for a water bailiff, without any warrant or other authority than this Order, to seize and detain any person found committing an offence against any provision of this Order and to deliver such person to a constable.

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<sup>(12)</sup> 1984 c. 54.

<sup>(13)</sup> 1980 c. 66.

(7) For the purposes of this article “land” includes land covered by water, but does not include a dwelling house or any yard, garden, outhouses and pertinents belonging thereto or usually enjoyed therewith.

#### *Further provision as to offences*

#### **Offences by bodies corporate**

**60.**—(1) Where an offence under any of the provisions of this Order 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 or she as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he or she were a director of the body corporate.

#### **Offences in relation to obstruction**

**61.** Any person who refuses to allow a constable or a water bailiff to exercise any power conferred on such constable or water bailiff by or in pursuance of this Order, or who obstructs the exercise of any such power, shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding 3 months or to both such fine and such imprisonment.

#### *Powers of court*

#### **Power of court in trial for an offence to convict of another**

**62.** If, upon a trial for an offence under article 31, 40 or 44, or any rule of law relating to reset, the court is satisfied that the accused is—

- (a) not guilty of the offence charged; but
- (b) guilty of another of those offences,

it may acquit the accused of the offence charged but find the accused guilty of the other offence and the accused shall then be liable to the punishment for that other offence.

#### **Forfeiture**

**63.**—(1) Any person who is convicted of an offence against any of the provisions of this Order shall be liable to the forfeiture of—

- (a) any fish illegally taken by that person or in that person’s possession at the time of the offence;
- (b) any instrument or article by which the offence was committed; and
- (c) any vehicle or boat used by that person to assist in the commission of the offence.

(2) Subject to paragraph (3), anything forfeited under this article shall be disposed of as the court may direct.

(3) Any fish seized under this article as liable to forfeiture may be sold by the person seizing it, and the net proceeds of the sale shall be liable to forfeiture in the same manner as the fish sold.

(4) No person shall be subject to any liability on account of any neglect or failure to exercise the powers conferred by this article.

### **Defences**

**64.**—(1) Paragraph (2) applies where in accordance with a provision mentioned in paragraph (3) it is a defence for a person charged with an offence to prove or show a particular matter.

(2) If the person adduces evidence which is sufficient to raise an issue with respect to the matter the court or jury shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(3) The provisions in respect of which paragraph (2) applies are articles 39(2), 42(3), 43(3) and 51(5).

### **Jurisdiction in respect of offences committed on sea coast or at sea**

**65.** Any offence committed under this Order on the sea coast, or at sea beyond the ordinary jurisdiction of any sheriff or justices of the peace, shall be held to have been committed within the boundary of any local government area abutting on such sea coast, or adjoining such sea, and may be tried and punished accordingly.

### **Jurisdiction**

**66.** Subject to Article 65—

(1) Proceedings (whether civil or criminal) arising from this Order shall be taken, in Scotland, before the sheriff or, in England, the justice of the peace in whose area the matter giving rise to the proceedings takes place.

(2) Offences under this Order alleged to have been committed in the sea area of the district may be prosecuted in either Scotland or England.

### **Disqualification of justices**

**67.** No sheriff or justice shall be precluded from presiding over civil or criminal proceedings arising out of the provisions of this Order, by reason of any interest in any fishery, except where that fishery is the subject of the proceedings.

## **PART 4**

### **PROVISIONS APPLICABLE ONLY IN SCOTLAND**

#### *Administration of freshwater fisheries*

### **Increased availability of, and protection for, freshwater fishing**

**68.**—(1) Where the Scottish Ministers are satisfied that, if proposals submitted to them under this article were implemented, there would be a significant increase in the availability of fishing for freshwater fish in the district, they may, subject to paragraph (3), make an order (in this Order referred to as a “protection order”).

(2) A protection order shall—

- (a) be made in relation to such area as the Scottish Ministers may prescribe, which shall be the catchment area of the district, or such part of the district as the Scottish Ministers think appropriate; and
  - (b) prohibit persons without legal right or without written permission from a person having such right from fishing for or taking freshwater fish in the inland waters in the prescribed area.
- (3) The Scottish Ministers shall not make a protection order unless—
- (a) they have received proposals in writing from or on behalf of an owner of land, to which pertains a right of fishing for freshwater fish in any inland waters in the area to which the proposals relate, or an occupier of such right, in relation to the improvement of, or the giving or availability of access to, fishings;
  - (b) they have consulted a body which in their opinion is representative of persons wishing to fish for freshwater fish in inland waters in Scotland;
  - (c) they are satisfied that, if such proposals were implemented, fishing for freshwater fish in the area to be prescribed by them in the protection order would be available—
    - (i) to a degree, which they consider reasonable having regard in particular to what is, in their opinion, the demand, by persons who are neither owners nor occupiers of a right of fishing for freshwater fish in the waters to which the proposals relate nor members of a club which is such an owner or occupier in those waters, for fishing in that area, and
    - (ii) on such terms and conditions as they consider reasonable; and
  - (d) they have taken into consideration the need for conservation of any species of fish and have carried out such consultation in this regard as they consider necessary.
- (4) Proposals referred to in paragraph (3)(a) shall specify—
- (a) the limits of the waters to which they relate;
  - (b) the extent to which, and the places with regard to which, it is proposed to grant leases or permits in respect of fishing for freshwater fish in those waters, and any terms and conditions (including charges) relating to such leases or permits;
  - (c) any operations which it is proposed to carry out for the purpose of improving such fishing in those waters; and
  - (d) such matters as the Scottish Ministers may at any time in relation to the proposals direct, and the person submitting such proposals to the Scottish Ministers may at any time withdraw them or, after consultation with the Scottish Ministers, modify them.
- (5) In deciding for the purposes of paragraph (3)(c)(ii) whether the terms and conditions referred to therein are reasonable, the Scottish Ministers may have regard to the circumstances in which fishing is made available in any waters other than those to which the proposals relate in respect of the following matters—
- (a) the amount of charges;
  - (b) the permitted methods of fishing or tackle;
  - (c) the maximum number of fish that may be caught;
  - (d) the permitted maximum number of rods;
  - (e) the permitted times of fishing;
  - (f) the permitted minimum size of fish which may be taken;

- (g) the number of persons permitted to fish who are neither owners nor occupiers of a right of fishing for freshwater fish in those waters nor members of a club which is such an owner or occupier in those waters; and
  - (h) any other matters which the Scottish Ministers consider relevant.
- (6) The Scottish Ministers may at any time require an owner or occupier of a right of fishing for freshwater fish in a prescribed area to furnish them with information regarding the implementation in that area of proposals in so far as they relate to that right.
- (7) Subject to paragraph (8), a protection order may provide that—
- (a) it shall cease to have effect on a date specified therein; and
  - (b) any complaints concerning the implementation of proposals must be received by Scottish Ministers not later than 6 months before the specified date,
- and if, 6 months before the specified date, the Scottish Ministers have received no such complaints or if, in their opinion, the complaints received by them are insignificant or frivolous, they may make a protection order renewing that protection order with effect from the specified date without further procedure, except that paragraph 7 of Schedule 3 shall apply to such an order.
- (8) Where the Scottish Ministers have received complaints under paragraph (7) which appear to them to be well-founded (that is to say, neither insignificant or frivolous), they shall, without prejudice to the competence of their making a fresh protection order in accordance with this article, not renew the protection order under that paragraph.
- (9) Subject to paragraphs (7) and (8), Schedule 3 shall have effect as to the procedure of protection orders.
- (10) In paragraphs (1), (3)(c), (6) and (7), “proposals” means proposals as originally submitted to the Scottish Ministers or, as the case may be, as modified under paragraph (4).
- (11) The proposals mentioned in this article may be communicated and stored electronically.
- (12) In this article, and article 69 “inland waters” does not include the tidal parts of the district.
- (13) For the purposes of this article, articles 69 and 70, and Schedule 3, “prescribed area” means the area prescribed in a protection order made under this article.

#### **Appointment of wardens to secure compliance with protection order**

**69.**—(1) For the purpose of securing compliance with a protection order, the Scottish Ministers may appoint as wardens such persons as they think fit from among persons nominated to them by or on behalf of an owner of land to which a right of fishing for freshwater fish pertains or by or on behalf of an occupier of such a right in any inland waters in the prescribed area.

- (2) A warden appointed under paragraph (1) or a constable may—
  - (a) make enquiry as to the legal right or written permission of any person to fish for or take freshwater fish in any waters in the prescribed area where there is reasonable cause to suspect that that person has no such right or permit and may require that person to produce written evidence of such right or permission within 14 days; and
  - (b) if there is reasonable cause to suspect that a contravention of a prohibition contained in a protection order has taken place within the prescribed area, seize any instrument or article used or calculated to be of use in such contravention.
- (3) In this article, “inland waters” does not include the tidal parts of the district.

#### **Powers of entry and obstruction of wardens etc.**

- 70.**—(1) A warden shall have right to enter any land—

- (a) in the vicinity of any waters in the prescribed area for the purpose of exercising any of the powers conferred by article 70(1);
- (b) for the purpose of affixing or maintaining a copy of any order or notice which that warden is required to affix or maintain by any provision of Schedule 3;
- (c) in the vicinity of any waters in the prescribed area and remain there during any period for the purpose of preventing a breach of a protection order or of detecting any person contravening a protection order; and no warden remaining on such land for such a purpose shall be deemed to be a trespasser on that land.

(2) Any person duly authorised in writing by the Scottish Ministers under Schedule 3 shall have a right to enter land for the purpose of affixing or maintaining a copy of any notice or order which that warden is required to affix or maintain by any provision of that Schedule.

(3) Any person who wilfully obstructs or refuses to allow—

- (a) a warden to exercise any of the powers conferred by article 70(1) or paragraph (1); or
- (b) any person referred to in paragraph (2) to exercise the powers conferred by that paragraph,

shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding 3 months.

(4) The production of the instrument of appointment of a warden purporting to be signed by or on behalf of the Scottish Ministers or of the authorisation by the Scottish Ministers of any person referred to in paragraph (2) shall be sufficient warrant for the exercise of any power which has been conferred on that warden or such a person.

(5) In this article, “land” does not include any building.

### **Financial contributions towards organisations developing freshwater fisheries**

**71.** The Scottish Ministers may make payments of such amount and subject to such conditions as they may determine to any organisation approved by them and having as its object, or one of its principal objects, the development and improvement of freshwater fisheries and the making of such fisheries available for letting or fishing by persons authorised to fish.

### *Miscellaneous*

### **Licensing and regulation of salmon dealing**

**72.—(1)** Without prejudice to the generality of section 44 of the Civic Government (Scotland) Act 1982<sup>(14)</sup>(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; and
  - (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 on the standard scale or both; or

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(14) 1982 c. 45. Section 44(2)(d) was amended by the Criminal Procedure (Scotland) Act 1975 (c. 21), section 289G.

- (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 section 7(1) of that Act and any provision under sub-paragraph (c) 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; and
  - (f) provide as to the exercise of powers of entry and search by water bailiffs,
- but not so as to enable these powers to be exercised in any dwelling house or any yard, outhouses and pertinents belonging to or usually enjoyed with a dwelling house.

(2) The Scottish Ministers shall have power by order to prescribe the fees, or 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 that Act 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.

#### **Application of Leases Act 1449**

**73.**—(1) Notwithstanding any rule of law to the contrary, any contract entered into in writing for a consideration and for a period of not less than a year whereby an owner of land to which a right of fishing for freshwater fish in any inland waters pertains or the occupier of such a right authorises another person to so fish shall be deemed to be a lease to which the Leases Act 1449<sup>(15)</sup> applies, and the right of fishing so authorised shall, for the purposes of succession to that right, be deemed to be heritable property.

(2) In this article “inland waters” does not include the tidal parts of the district.

## **PART 5**

### **PROVISION APPLICABLE ONLY IN ENGLAND AND WALES**

#### **Power of Commission to prosecute in England and Wales**

**74.** —Without prejudice to any right of prosecution exercisable by any other competent authority, the Commission shall have the power to prosecute offences under this Order in England and Wales, and to continue to prosecute any such prosecution commenced before the date on which this Order comes into force by or at the instance of the Commissioners appointed under the Tweed Acts.

## **PART 6**

### **GENERAL**

#### **Application of this Order to the Crown**

**75.**—(1) Subject to such modifications as may be prescribed, Part 1, articles 36, 37 and 41 and Part 4 shall apply to land—

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(15) 1449 c. 6.

- (a) an interest in which belongs to Her Majesty in right of the Crown;
- (b) an interest in which belongs to a government department or the Scottish Administration; or
- (c) which is held in trust for Her Majesty for the purposes of a government department or the Scottish Administration,

and, for the purposes of this article, “land” includes salmon fisheries.

- (2) Except as provided in paragraph (1), this Order shall not apply to the Crown.

### **Consequential amendments, repeals, revocations and transitional provisions**

**76.**—(1) The enactments mentioned in Part 1 of Schedule 4 shall have effect subject to the amendments mentioned in that Part, being amendments consequential upon the provisions of this Order.

- (2) Without prejudice to article 35, 36 or 77(3)—

- (a) the weekly close time for salmon fishing shall extend from the hour of six in the evening on Friday to the hour of six on the following Monday morning;
- (b) the annual close time for salmon fishing in the district shall run from 15th September in any year until 14th February in the following year, both dates inclusive;
- (c) fishing for salmon by rod and line (but only with the artificial fly) shall be permitted between 15th September and 30th November, and between 1st February and 14th February, all dates inclusive,

but these provisions shall cease to have effect when corresponding provision made under article 35, 36 or 77(3) comes into force.

- (2) The enactments mentioned in the first column of Part 2 of Schedule 4 are repealed or revoked to the extent mentioned in the second column of that Schedule, in so far as they apply to the district.

### **Orders**

**77.**—(1) Any power of the Scottish Ministers to make orders under this Order shall be exercised by statutory instrument.

- (2) Subject to paragraph (4), a statutory instrument containing any order under this Order shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(3) Without prejudice to paragraph (2) or to any general power to consolidate subordinate legislation, the requirements of this Order in relation to applications or consultation in respect of certain of the subordinate legislation which may be made under this Order shall not apply in relation to any statutory instrument reproducing or consolidating any provisions made by, under or by virtue of the Tweed Acts or any general legislation relating to salmon and freshwater fisheries in the district, and which could be made under or by virtue of any provision of this Order.

- (4) Paragraph (2) does not apply to orders made under articles—

- (a) 3(5) (estuary limits order);
- (b) 3(7) (orders ancillary to estuary limits orders);
- (c) 36(1) (annual close time orders);
- (d) 53(1) (prohibition of specified baits and lures);
- (e) 68(1) (protection orders).



Clerk of the Privy Council

## SCHEDULE 1

## Article 8

## REPRESENTATIVE COMMISSIONERS

<i>Column 1</i> <i>Local Authority</i>	<i>Column 2</i> <i>Number of</i> <i>representatives</i>	<i>Column 3</i> <i>PART of local</i> <i>authority area</i> <i>represented</i>	<i>Column 4</i> <i>Number of</i> <i>representatives</i> <i>for each Part</i>	<i>Column 5</i> <i>Number of</i> <i>representatives</i> <i>of associations</i> <i>and clubs</i>
Scottish Borders Council	34	Former Burgh of Coldstream	2	1
		Former Burgh of Duns	2	1
		Former Burgh of Eyemouth	2	1
		Remainder of the area of the former District of Berwickshire	3	2
		Former Burgh of Jedburgh	2	1
		Former Burgh of Kelso	2	1
		Former Burgh of Hawick	2	1
		Remainder of the area of the former District of Roxburgh	3	2
		Former Burgh of Selkirk	2	1
		Former Burgh of Lauder	2	1
		Former Burgh of Galashiels	2	1
		Former Burgh of Melrose	2	1
		Remainder of the former District of Ettrick and Lauderdale	3	2
		Former Burgh of Peebles	2	1
		Former Burgh of Innerleithen	2	1

<i>Column 1</i> <i>Local Authority</i>	<i>Column 2</i> <i>Number of</i> <i>representatives</i>	<i>Column 3</i> <i>PART of local</i> <i>authority area</i> <i>represented</i>	<i>Column 4</i> <i>Number of</i> <i>representatives</i> <i>for each Part</i>	<i>Column 5</i> <i>Number of</i> <i>representatives</i> <i>of associations</i> <i>and clubs</i>
		Remainder of the former District of Tweeddale	1	—
Berwick-upon-Tweed District Council	9	Former Borough of Berwick-upon-Tweed	2	1
		The former rural district of Norham and Islandshires	2	1
		The former rural district of Glendale	4	3
		The remainder of the River Tweed catchment area within the County of Northumberland	1	—

## SCHEDULE 2

Articles 3(6), 36(3), 53(5), 54(9), 55

ESTUARY LIMITS ORDERS, ANNUAL CLOSE TIME  
ORDERS AND SALMON CONSERVATION ORDERS*Estuary limits orders*

1. The Scottish Ministers may make an estuary limits order only on application to them by the Commission.

2. An application under paragraph 1 shall be accompanied by the Commission's written proposals which shall state—

- (a) the proposed estuary limits; and
- (b) the general effect of the proposals.

*Annual close time orders*

3. The Scottish Ministers may make an annual close time order only on application to them by the Commission.

4. An application under paragraph 3 shall be accompanied by the Commission'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; and
- (b) the general effect of the proposals,

and the proposals may include different dates and periods for different parts of the district.

*Salmon conservation orders*

- 5. The Scottish Ministers may make a salmon conservation order either—
  - (a) on an application to them by the Commission; or
  - (b) otherwise.
- 6. An application under paragraph 5(a) shall be in writing and shall contain the Commission's proposals, including—
  - (a) a general description of the proposals;
  - (b) a statement as to why the Commission considers that the proposals are necessary or expedient; and
  - (c) a statement as to the general effect of the proposals.
- 7. In the application of paragraphs 8 to 13 to a salmon conservation order made under paragraph 5(b)—
  - (a) references to the Commission and to an application shall be omitted;
  - (b) the reference in paragraph 8 to the persons who shall be consulted shall be construed as including, in particular, the Commission; and
  - (c) paragraph 9(3) shall be omitted.

*Common provisions with respect to orders*

- 8. On receiving an application under paragraph 1, 3 or 5, the Scottish Ministers shall consult such persons as they consider appropriate and may—
  - (a) request from the Commission such additional information as they think fit;
  - (b) dismiss the application; or
  - (c) proceed in accordance with the remaining provisions of this Schedule.
- 9.—(1) Before making an order, the Scottish Ministers 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.
  - (2) Notice shall be given at least once in each of two successive weeks by advertising in a newspaper circulating in the district.
  - (3) The cost of giving notice shall be met by the applicant under paragraph 1, 3 or 5.
- 10. At any time, the Scottish Ministers may alter the proposals in such way as they think fit and shall consider whether such alterations are sufficient to require—
  - (a) further consultation as mentioned in paragraph 8; and
  - (b) further notice to be given under paragraph 9.

*Making of annual close time, estuary limits or salmon conservation order*

**11.** If no representations or objections are duly made, or if all so made are withdrawn, the Scottish Ministers may make an order.

**12.—(1)** If any representation or objection duly made is not withdrawn, the Scottish Ministers may, after considering it—

- (a) make an order;
- (b) dismiss the application; or
- (c) cause a local inquiry to be held.

(2) Where they decide to proceed under sub-paragraph (1)(c), the Scottish Ministers shall appoint a person to hold the inquiry and to report thereon to them.

(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.

(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 Scottish Ministers may make orders as to the expenses incurred by them in relation to the inquiry (including such reasonable sum as they 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 Scottish Ministers under sub-paragraph (5) requiring any party to pay expenses may be enforced in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

**13.** After considering the report of the person appointed to hold the inquiry in pursuance of paragraph 12 and any representations or objections which were duly made, the Scottish Ministers may make an order, or dismiss the application.

**14.** Applications under this Schedule may be communicated and stored electronically.

SCHEDULE 3

Article 69

PROVISIONS AS TO MAKING, VARIATION  
AND REVOCATION OF PROTECTION ORDERS

*Making of protection order*

**1.** Before the Scottish Ministers make a protection order they shall require a person from whom they have received proposals under article 69(2)(a) to give notice in such form as they may direct—

- (a) stating the general effect of those proposals;
- (b) naming a place or places where a copy of the proposals and any map accompanying the proposals may be inspected free of charge at all reasonable hours; and
- (c) 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.

2. The notice to be given under paragraph 1 shall be given by publication in the Edinburgh Gazette and in such number of such newspapers as the Scottish Ministers may direct.

3. The Scottish Ministers may direct that, in addition to publication of the notice as required by paragraph 2, a copy or copies of it shall be affixed by a person duly authorised in writing by them to some conspicuous object or objects on the banks of any waters to which the proposals relate or of such other waters as they may direct and at such number of places as they may direct.

4. If no representations or objections are duly made, or if any so made are withdrawn, the Scottish Ministers may make a protection order.

5.—(1) If any representation or objection duly made is not withdrawn, the Scottish Ministers may, after considering the same, forthwith make a protection order or may cause a local inquiry to be held.

(2) The Scottish Ministers shall appoint a person to hold the inquiry and to report thereon to them.

(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 or objections to the proposals, and shall be published in such newspaper or newspapers as the Scottish Ministers may direct.

(4) The person appointed to hold the inquiry may, on the motion of any party to the inquiry or on that person's own motion, serve a notice in writing on any person requiring that person to attend at the time and place set forth in the notice to give evidence or to produce any books or documents in that person's custody or under that person's control which relate to any matter in question at the inquiry, provided that—

(i) no person shall be required in obedience to such a notice to attend at any place which is more than 16 kilometres from the place where that person resides unless the necessary expenses are paid or tendered to that person; and

(ii) nothing in this sub-paragraph shall empower the person appointed to hold the inquiry to require any person to produce any book or document or to answer any question which that person would be entitled, on the ground of privilege or confidentiality, to refuse to produce or to answer if the inquiry were a proceeding in a court of law.

(5) 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.

(6) Any person who refuses or wilfully neglects to attend in obedience to a notice under sub-paragraph (4) or to give evidence or who wilfully alters, suppresses, conceals, destroys, or refuses to produce, any book or document which that person may be required to produce by such a notice shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale or to imprisonment for a period not exceeding 3 months.

(7) The Scottish Ministers may make determinations as to the expenses incurred by them in relation to the inquiry (including such reasonable sum as they 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.

(8) Any determination of the Scottish Ministers under sub-paragraph (7) requiring any party to pay expenses may be enforced in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

6. After considering the report of the person appointed to hold the inquiry in pursuance of paragraph 5 and any representations or objections which were duly made, the Scottish Ministers may make a protection order.

7. As soon as may be after a protection order has been made—

- (a) the Scottish Ministers shall publish the making of the order in the Edinburgh Gazette and in such number of local newspapers circulating in the area to which the order relates as they think fit; and
- (b) a person duly authorised in writing by the Scottish Ministers or a warden shall affix and maintain a copy or copies of the order and such other notice as the Scottish Ministers may consider necessary of the incidence of the order to some conspicuous object or objects, at such places as the Scottish Ministers may direct, on the banks of any waters to which the order relates or elsewhere.

#### *Variation of protection order*

8. Paragraph 7 shall apply to an order varying a protection order as it applies to a protection order.

#### *Revocation of protection order*

9.—(1) Before the Scottish Ministers make an order revoking a protection order, they may by notice make such publication as they think fit of the general effect of the proposed revocation and specify a time within which, and the manner in which, representations or objections with respect to the proposed revocation may be made.

(2) The Scottish Ministers may cause a copy or copies of the notice referred to in sub-paragraph (1) to be affixed by a person duly authorised by them in writing to some conspicuous object or objects on the banks of such waters at such places as the Scottish Ministers may direct.

(3) If no representations or objections are duly made, or if any so made are withdrawn, the Scottish Ministers may make the order revoking the protection order.

(4) If any representation or objection duly made is not withdrawn, the Scottish Ministers may forthwith make the order or may cause a local inquiry to be held.

(5) Sub-paragraphs (2) to (8) of paragraph 5 shall apply in relation to an inquiry under this paragraph as they apply in relation to an inquiry under that paragraph, but as if in sub-paragraph (3) of that paragraph for the word “proposals” there were substituted the words “proposed revocation”.

(6) Paragraphs 6 and 7 shall apply in relation to an order revoking a protection order as they apply in relation to a protection order, but as if in paragraph 6 for the reference to paragraph 5 above there were substituted a reference to this paragraph.

#### *Publication of orders*

10. The Scottish Ministers shall cause to be published each year a list of prescribed areas.

## SCHEDULE 4

Article 77

## CONSEQUENTIAL AMENDMENTS, REPEALS AND REVOCATIONS

## PART 1

## CONSEQUENTIAL AMENDMENTS

*Sea Fish (Conservation) Act 1967 (c. 84)*

**1.** In section 18 (enforcement of orders in relation to salmon and migratory trout) of the Sea Fish (Conservation) Act 1967, after subsection (2)(16), there shall be inserted the following subsection—

“(3) Where any order under the said section 4, 5 or 6 imposes any prohibition or restriction on fishing for salmon or migratory trout within any waters which form part of the Tweed district (as defined in article 2(1) of the Scotland Act 1998 (River Tweed) Order 2006 (S.I. 2006/ ))), or on landing salmon or migratory trout at a place within that district, the provisions of articles 57 to 62 and 64(3) and (4) of that Order (which relate to enforcement and forfeiture) shall apply in relation to any contravention of the orders mentioned above as they apply in relation to a contravention of that Order.”.

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

**2.** In subsection (1) of section 39 (Border rivers and Solway Firth) of the Salmon and Freshwater Fisheries Act 1975, for the words from “means”, to the end there shall be substituted the words “means the Tweed district (as defined in article 2(1) of the Scotland Act 1998 (River Tweed) Order 2006 (S.I. 2006/ ))).”.

*Inshore Fishing (Scotland) Act 1984 (c. 26)*

**3.** After section 7(17) of the Inshore Fishing (Scotland) Act 1984 there shall be inserted the following section—

**“Powers of water bailiffs in the Tweed district etc.**

**7A.—**(1) This section applies where an order under section 1 of this Act imposes any prohibition or restriction on fishing for salmon or migratory trout within any waters which form part of the Tweed district (as defined in article 2(1) of the Scotland Act 1998 (River Tweed) Order 2006 (S.I. 2006/ ))).

(2) Any water bailiff or constable or any person appointed by the Scottish Ministers in pursuance of article 59(5) of that Order may exercise in relation to a contravention of an order referred to in subsection (1) any of the powers conferred upon him in relation to a contravention of that Order.

(3) The provisions of articles 57 to 62 and 64(3) and (4) of that Order shall apply in relation to an order referred to in subsection (1) as they apply in relation to a contravention of that Order.”.

(16) Section 18(2) was substituted in respect of Scotland only by the [Salmon and Freshwater \(Consolidation\) \(Scotland\) Act 2003 \(asp 15\)](#) (“the 2003 Act”), section 70 and Schedule 4, paragraph 1.

(17) Section 7 was amended in respect of Scotland only by the 2003 Act, section 70 and Schedule 4, paragraph 2.



*Scotland Act 1998 (c. 46)*

4. In subsection (4) of section 111 of the Scotland Act 1998 (regulation of Tweed and Esk fisheries), in the definition of “the River Tweed”, for the words from “has” to the end there shall be substituted the words “means the Tweed district (as defined in article 2(1) of the Scotland Act 1998 (River Tweed) Order 2006 (S.I. 2006/ ))”.

## PART 2

### REPEALS AND REVOCATIONS

<i>Enactment</i>	<i>Extent of repeal or revocation</i>
Theft Act 1607 (c. 6)	The words “and fisches in propir stankis and loches”.
Tweed Fisheries Act 1857 (c.cxlvi)	The whole Act.
Tweed Fisheries Amendment Act 1859 (c.lxx)	The whole Act.
Salmon Fisheries (Scotland) Act 1868 (c. 123)	The whole Act.
Freshwater Fish (Scotland) Act 1902 (c. 29)	The whole Act.
Trout (Scotland) Act 1933 (c. 35)	The whole Act.
Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (c. 26)	The whole Act.
Rivers (Prevention of Pollution) (Scotland) Act 1965 (c. 13)	Section 13(1).
Tweed Fisheries Act 1969 (c.xxiv)	The whole Act.
Control of Pollution Act 1974 (c. 40)	In Schedule 3, paragraph 11.
Freshwater and Salmon Fisheries (Scotland) Act 1976 (c. 22)	The whole Act.
Fishery Limits Act 1976 (c. 86)	In Schedule 2, paragraph 12.
Fisheries Act 1981 (c. 29)	In Schedule 4, paragraphs 18 to 25.
Salmon Act 1986 (c. 62)	The whole Act, except section 31.
Water Act 1989 (c. 15)	In Schedule 17, paragraph 4.
Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40)	In Schedule 4, paragraph 11.
Deregulation (Salmon Fisheries (Scotland) Act 1868) Order 1996 (S.I. 1996/1211)	The whole Order.
Scotland Act 1998 (Border Rivers) Order 1999 (S.I. 1999/1746)	Part 3.
Salmon Conservation (Scotland) Act 2001 (asp 3)	The whole Act.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order applies to the Tweed district which includes the catchment of the River Tweed and the other rivers that run to the sea between, in the north a point on the coast at the boundary between the Scottish Borders and East Lothian and, in the south, a point on the coast west of Holy Island, and an adjacent area of sea.

It consolidates, with some amendments, the existing salmon and freshwater fisheries legislation for the Tweed district. The Order makes provision in relation to the Tweed district by—

- (a) defining the Tweed district and Estuary limits of the River Tweed;
- (b) providing for the establishment of the River Tweed Commission, with powers to administer salmon and freshwater fisheries in the district for the purposes of protection or improvement of the fisheries, preservation of salmon and freshwater fish, and stocking of the district with salmon or freshwater fish;
- (c) defining permissible methods of fishing for salmon and freshwater fish, and defining offences and penalties where there is non-compliance;
- (d) making provision for weekly and annual close times for fishing;
- (e) detailing offences relating to the sale, purchase and possession of salmon and trout; in relation to the disturbance or destruction of juvenile salmon and spawning beds, the balance between property rights in the bed of a river and conservation of juvenile salmon has been changed in favour of conservation, but provision is made for proprietors to obtain permission to undertake necessary works;
- (f) defining exemptions from certain offences or acts if done for scientific or other purposes;
- (g) enabling Scottish Ministers to make Orders in relation to the regulation of fisheries and for the conservation of salmon;
- (h) giving powers to water bailiffs and police constables to enforce the provisions of the Order;
- (i) providing for the making of protection orders, where appropriate, to make it an offence to fish for freshwater fish without legal right or written permission;
- (j) giving powers to wardens to enforce protection order provisions;
- (k) providing for the licensing and regulation of salmon dealers;
- (l) providing powers to the River Tweed Commission to prosecute in the courts in England and Wales;
- (m) making provision for the application of the Order to the Crown.

This Order restricts the application of provisions in the enactments listed in Schedule 4 to exclude the Tweed district, and makes consequential amendments. The Order replaces 19th, 20th and 21st Century legislation in respect of the Tweed district, which is repealed under Schedule 4.