
DRAFT STATUTORY INSTRUMENTS

2006 No.

The Scotland Act 1998 (River Tweed) Order 2006

PART 2

METHODS OF FISHING AND OFFENCES RELATED TO FISHING

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.

(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.