
DRAFT STATUTORY INSTRUMENTS

2006 No.

The Scotland Act 1998 (River Tweed) Order 2006

PART 2

METHODS OF FISHING AND OFFENCES RELATED TO FISHING

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)(1), 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,

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.

(1) 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.

(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.