
DRAFT STATUTORY INSTRUMENTS

2006 No.

The Scotland Act 1998 (River Tweed) Order 2006

PART 2

METHODS OF FISHING AND OFFENCES RELATED TO FISHING

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⁽¹⁾ or the Land Drainage Act 1991⁽²⁾.

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.

(1) 1991 c. 57.
(2) 1991 c. 59.