
DRAFT STATUTORY INSTRUMENTS

2006 No.

The Scotland Act 1998 (River Tweed) Order 2006

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)(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.

(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.

(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.

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(2) or the Land Drainage Act 1991(3).

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;

(2) 1991 c. 57.

(3) 1991 c. 59.

- (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.

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.