
DRAFT STATUTORY INSTRUMENTS

2006 No.

The Scotland Act 1998 (River Tweed) Order 2006

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(1), or a highway within the meaning of the Highways Act 1980(2) 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

(1) 1984 c. 54.

(2) 1980 c. 66.

(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.

(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.