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DRAFT STATUTORY INSTRUMENTS

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**2006 No.**

**The Scotland Act 1998 (River Tweed) Order 2006**

**PART 3**

**ENFORCEMENT**

*Powers of court*

**Power of court in trial for an offence to convict of another**

**62.** If, upon a trial for an offence under article 31, 40 or 44, or any rule of law relating to reset, the court is satisfied that the accused is—

- (a) not guilty of the offence charged; but
- (b) guilty of another of those offences,

it may acquit the accused of the offence charged but find the accused guilty of the other offence and the accused shall then be liable to the punishment for that other offence.

**Forfeiture**

**63.—(1)** Any person who is convicted of an offence against any of the provisions of this Order shall be liable to the forfeiture of—

- (a) any fish illegally taken by that person or in that person's possession at the time of the offence;
- (b) any instrument or article by which the offence was committed; and
- (c) any vehicle or boat used by that person to assist in the commission of the offence.

(2) Subject to paragraph (3), anything forfeited under this article shall be disposed of as the court may direct.

(3) Any fish seized under this article as liable to forfeiture may be sold by the person seizing it, and the net proceeds of the sale shall be liable to forfeiture in the same manner as the fish sold.

(4) No person shall be subject to any liability on account of any neglect or failure to exercise the powers conferred by this article.

**Defences**

**64.—(1)** Paragraph (2) applies where in accordance with a provision mentioned in paragraph (3) it is a defence for a person charged with an offence to prove or show a particular matter.

(2) If the person adduces evidence which is sufficient to raise an issue with respect to the matter the court or jury shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(3) The provisions in respect of which paragraph (2) applies are articles 39(2), 42(3), 43(3) and 51(5).

### **Jurisdiction in respect of offences committed on sea coast or at sea**

**65.** Any offence committed under this Order on the sea coast, or at sea beyond the ordinary jurisdiction of any sheriff or justices of the peace, shall be held to have been committed within the boundary of any local government area abutting on such sea coast, or adjoining such sea, and may be tried and punished accordingly.

### **Jurisdiction**

**66.** Subject to Article 65–

(1) Proceedings (whether civil or criminal) arising from this Order shall be taken, in Scotland, before the sheriff or, in England, the justice of the peace in whose area the matter giving rise to the proceedings takes place.

(2) Offences under this Order alleged to have been committed in the sea area of the district may be prosecuted in either Scotland or England.

### **Disqualification of justices**

**67.** No sheriff or justice shall be precluded from presiding over civil or criminal proceedings arising out of the provisions of this Order, by reason of any interest in any fishery, except where that fishery is the subject of the proceedings.