
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.

Further provision as to offences

Offences by bodies corporate

60.—(1) Where an offence under any of the provisions of this Order committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he or she as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he or she were a director of the body corporate.

Offences in relation to obstruction

61. Any person who refuses to allow a constable or a water bailiff to exercise any power conferred on such constable or water bailiff by or in pursuance of this Order, or who obstructs the exercise of any such power, shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding 3 months or to both such fine and such imprisonment.

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.