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DRAFT STATUTORY INSTRUMENTS

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**2006 No.**

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

**PART 4**

**PROVISIONS APPLICABLE ONLY IN SCOTLAND**

*Administration of freshwater fisheries*

**Increased availability of, and protection for, freshwater fishing**

**68.**—(1) Where the Scottish Ministers are satisfied that, if proposals submitted to them under this article were implemented, there would be a significant increase in the availability of fishing for freshwater fish in the district, they may, subject to paragraph (3), make an order (in this Order referred to as a “protection order”).

(2) A protection order shall—

- (a) be made in relation to such area as the Scottish Ministers may prescribe, which shall be the catchment area of the district, or such part of the district as the Scottish Ministers think appropriate; and
- (b) prohibit persons without legal right or without written permission from a person having such right from fishing for or taking freshwater fish in the inland waters in the prescribed area.

(3) The Scottish Ministers shall not make a protection order unless—

- (a) they have received proposals in writing from or on behalf of an owner of land, to which pertains a right of fishing for freshwater fish in any inland waters in the area to which the proposals relate, or an occupier of such right, in relation to the improvement of, or the giving or availability of access to, fishings;
- (b) they have consulted a body which in their opinion is representative of persons wishing to fish for freshwater fish in inland waters in Scotland;
- (c) they are satisfied that, if such proposals were implemented, fishing for freshwater fish in the area to be prescribed by them in the protection order would be available—
  - (i) to a degree, which they consider reasonable having regard in particular to what is, in their opinion, the demand, by persons who are neither owners nor occupiers of a right of fishing for freshwater fish in the waters to which the proposals relate nor members of a club which is such an owner or occupier in those waters, for fishing in that area, and

(ii) on such terms and conditions as they consider reasonable; and

- (d) they have taken into consideration the need for conservation of any species of fish and have carried out such consultation in this regard as they consider necessary.

(4) Proposals referred to in paragraph (3)(a) shall specify—

- (a) the limits of the waters to which they relate;

- (b) the extent to which, and the places with regard to which, it is proposed to grant leases or permits in respect of fishing for freshwater fish in those waters, and any terms and conditions (including charges) relating to such leases or permits;
- (c) any operations which it is proposed to carry out for the purpose of improving such fishing in those waters; and
- (d) such matters as the Scottish Ministers may at any time in relation to the proposals direct, and the person submitting such proposals to the Scottish Ministers may at any time withdraw them or, after consultation with the Scottish Ministers, modify them.

(5) In deciding for the purposes of paragraph (3)(c)(ii) whether the terms and conditions referred to therein are reasonable, the Scottish Ministers may have regard to the circumstances in which fishing is made available in any waters other than those to which the proposals relate in respect of the following matters—

- (a) the amount of charges;
- (b) the permitted methods of fishing or tackle;
- (c) the maximum number of fish that may be caught;
- (d) the permitted maximum number of rods;
- (e) the permitted times of fishing;
- (f) the permitted minimum size of fish which may be taken;
- (g) the number of persons permitted to fish who are neither owners nor occupiers of a right of fishing for freshwater fish in those waters nor members of a club which is such an owner or occupier in those waters; and
- (h) any other matters which the Scottish Ministers consider relevant.

(6) The Scottish Ministers may at any time require an owner or occupier of a right of fishing for freshwater fish in a prescribed area to furnish them with information regarding the implementation in that area of proposals in so far as they relate to that right.

(7) Subject to paragraph (8), a protection order may provide that—

- (a) it shall cease to have effect on a date specified therein; and
- (b) any complaints concerning the implementation of proposals must be received by Scottish Ministers not later than 6 months before the specified date,

and if, 6 months before the specified date, the Scottish Ministers have received no such complaints or if, in their opinion, the complaints received by them are insignificant or frivolous, they may make a protection order renewing that protection order with effect from the specified date without further procedure, except that paragraph 7 of Schedule 3 shall apply to such an order.

(8) Where the Scottish Ministers have received complaints under paragraph (7) which appear to them to be well-founded (that is to say, neither insignificant or frivolous), they shall, without prejudice to the competence of their making a fresh protection order in accordance with this article, not renew the protection order under that paragraph.

(9) Subject to paragraphs (7) and (8), Schedule 3 shall have effect as to the procedure of protection orders.

(10) In paragraphs (1), (3)(c), (6) and (7), “proposals” means proposals as originally submitted to the Scottish Ministers or, as the case may be, as modified under paragraph (4).

(11) The proposals mentioned in this article may be communicated and stored electronically.

(12) In this article, and article 69 “inland waters” does not include the tidal parts of the district.

(13) For the purposes of this article, articles 69 and 70, and Schedule 3, “prescribed area” means the area prescribed in a protection order made under this article.

### **Appointment of wardens to secure compliance with protection order**

**69.**—(1) For the purpose of securing compliance with a protection order, the Scottish Ministers may appoint as wardens such persons as they think fit from among persons nominated to them by or on behalf of an owner of land to which a right of fishing for freshwater fish pertains or by or on behalf of an occupier of such a right in any inland waters in the prescribed area.

- (2) A warden appointed under paragraph (1) or a constable may—
- (a) make enquiry as to the legal right or written permission of any person to fish for or take freshwater fish in any waters in the prescribed area where there is reasonable cause to suspect that that person has no such right or permit and may require that person to produce written evidence of such right or permission within 14 days; and
  - (b) if there is reasonable cause to suspect that a contravention of a prohibition contained in a protection order has taken place within the prescribed area, seize any instrument or article used or calculated to be of use in such contravention.
- (3) In this article, “inland waters” does not include the tidal parts of the district.

### **Powers of entry and obstruction of wardens etc.**

**70.**—(1) A warden shall have right to enter any land—

- (a) in the vicinity of any waters in the prescribed area for the purpose of exercising any of the powers conferred by article 70(1);
- (b) for the purpose of affixing or maintaining a copy of any order or notice which that warden is required to affix or maintain by any provision of Schedule 3;
- (c) in the vicinity of any waters in the prescribed area and remain there during any period for the purpose of preventing a breach of a protection order or of detecting any person contravening a protection order; and no warden remaining on such land for such a purpose shall be deemed to be a trespasser on that land.

(2) Any person duly authorised in writing by the Scottish Ministers under Schedule 3 shall have a right to enter land for the purpose of affixing or maintaining a copy of any notice or order which that warden is required to affix or maintain by any provision of that Schedule.

(3) Any person who wilfully obstructs or refuses to allow—

- (a) a warden to exercise any of the powers conferred by article 70(1) or paragraph (1); or
- (b) any person referred to in paragraph (2) to exercise the powers conferred by that paragraph,

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.

(4) The production of the instrument of appointment of a warden purporting to be signed by or on behalf of the Scottish Ministers or of the authorisation by the Scottish Ministers of any person referred to in paragraph (2) shall be sufficient warrant for the exercise of any power which has been conferred on that warden or such a person.

(5) In this article, “land” does not include any building.

### **Financial contributions towards organisations developing freshwater fisheries**

**71.** The Scottish Ministers may make payments of such amount and subject to such conditions as they may determine to any organisation approved by them and having as its object, or one of its principal objects, the development and improvement of freshwater fisheries and the making of such fisheries available for letting or fishing by persons authorised to fish.

### Miscellaneous

#### Licensing and regulation of salmon dealing

**72.**—(1) Without prejudice to the generality of section 44 of the Civic Government (Scotland) Act 1982<sup>(1)</sup>(power to designate additional activities as subject to licensing and regulation) an order as respects dealing in salmon made under that section may—

- (a) define dealing in salmon and so define it as to—
  - (i) include such acts preparatory to or connected with dealing in salmon; and
  - (ii) exclude dealing in such class or classes of salmon,
 as may be specified in the Order;
- (b) provide that the offence under section 7(1) of that Act (doing anything for which a licence is required without having one) shall be punishable—
  - (i) on summary conviction, by imprisonment for a term not exceeding three months, or a fine not exceeding the statutory maximum on the standard scale or both; or
  - (ii) on conviction on indictment, by imprisonment for a term not exceeding two years, or a fine or both;
- (c) provide that it shall be an offence for any person, other than a person holding a salmon dealer’s licence, to buy salmon from or sell salmon to a person not having such a licence;
- (d) provide that the offences under section 7(1) of that Act and any provision under sub-paragraph (c) shall be subject to such exceptions as may be specified in the Order;
- (e) provide that a licence shall be required only for such class or classes of dealing in salmon and dealing in such class or classes of salmon as may be specified in the Order; and
- (f) provide as to the exercise of powers of entry and search by water bailiffs,

but not so as to enable these powers to be exercised in any dwelling house or any yard, outhouses and pertinents belonging to or usually enjoyed with a dwelling house.

(2) The Scottish Ministers shall have power by order to prescribe the fees, or the maximum amounts of the fees, which the licensing authority may determine and charge under sub-paragraph (1) of paragraph 15 of Schedule 1 to that Act in respect of the licensing of dealing in salmon; and in that respect the licensing authority’s powers under that paragraph shall be subject to the provisions of any such Order.

#### Application of Leases Act 1449

**73.**—(1) Notwithstanding any rule of law to the contrary, any contract entered into in writing for a consideration and for a period of not less than a year whereby an owner of land to which a right of fishing for freshwater fish in any inland waters pertains or the occupier of such a right authorises another person to so fish shall be deemed to be a lease to which the Leases Act 1449<sup>(2)</sup>applies, and the right of fishing so authorised shall, for the purposes of succession to that right, be deemed to be heritable property.

- (2) In this article “inland waters” does not include the tidal parts of the district.

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(1) 1982 c. 45. Section 44(2)(d) was amended by the Criminal Procedure (Scotland) Act 1975 (c. 21), section 289G.

(2) 1449 c. 6.