



Salmon and Freshwater Fisheries Act 1975

1975 CHAPTER 51

PART VI

MISCELLANEOUS AND SUPPLEMENTARY

38 Works below high water mark.

- (1) Any works proposed to be constructed under this Act on, over or under tidal lands below high-water mark of ordinary spring tides shall be constructed only in accordance with such plans and sections and subject to such restrictions and regulations as the Secretary of State approves in writing before they are commenced.
- (2) Any alteration or extension of any such works shall be subject to the like approval.
- (3) If any such work is commenced or completed contrary to this section, the Secretary of State may abate and remove it and restore its site to its former condition at the cost of the person who commenced or executed it, or (if he is not the owner of the work) of the owner, and the cost shall be summarily recoverable by the Secretary of State.
- (4) This section is in addition to and not in derogation of any local Act.

Modifications etc. (not altering text)

- C1** S. 38 applied (1.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), **ss. 181(3), 225(2)**, (with ss. 16(6), 179, 222(3), 224(1), 225(4), Sch. 22 paras. 1, 2, 4, Sch. 23 para. 6).

39 Border rivers and Solway Firth.

- (1) This Act—
 - (a) does not apply to the River Tweed, but
 - (b) applies to so much of the River Esk, with its banks and tributary streams up to their source, as is situated in Scotland,

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and in this subsection “the River Tweed” ^{F1}means the Tweed district (as defined in article 2(1) of the Scotland Act 1998 (River Tweed) Order 2006 ([S.I. 2006/2913](#)).]

^{F2}(1A) In the application of this Act, under subsection (1)(b) above, to the River Esk in Scotland, references to this Act in sections 31 to 33 and section 36 shall be construed as including references to sections 1, 3 and 18 to 20 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act ^{M1} 1951 as applied to that River by section 21 of that Act.]

^{F3}(1B) Sections 31 to 34 and 36(2) of this Act shall, subject to the modifications set out in subsection (1C) below, apply throughout the catchment area of the River Esk in Scotland but a water bailiff shall exercise his powers under those sections as so applied only in relation to an offence—

- (a) against this Act;
- (b) against section 1 of the ^{M2} Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951; or
- (c) which is deemed to be an offence under this Act by virtue of section 211(6) of the ^{M3} Water Resources Act 1991,

which he has reasonable cause to suspect has been committed in a place to which this Act applies by virtue of subsection (1)(b) above.

(1C) The modifications referred to in subsection (1B) above are—

- (a) references in sections 31 to 34 of this Act to “ this Act ” shall be construed as including references to section 1 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (as applied to the River Esk by section 21 of that Act); and
- (b) in section 33—
 - (i) references to a justice of the peace shall be construed as including references to a sheriff; and
 - (ii) in subsection (2), the reference to an information on oath shall be construed as including a reference to evidence on oath.]

(2) Where the minimum size of mesh of nets used for taking salmon prescribed by any provision of this Act or by any byelaw in force in any part of the Solway Firth within England is greater than that which may be lawfully used in the part of the Solway Firth within Scotland, the provision or byelaw shall have effect as if the minimum size of mesh so prescribed in relation to the part of the Solway Firth within England were such as may be so lawfully used as aforesaid in the part of the Solway Firth within Scotland.

(3) The limits of the Solway Firth for the purposes of this section shall be determined by the Minister.

(4) ^{F4}

^{F5}(5) Nothing in this section [^{F6}the Water Resources Act 1991][^{F7}or the Water Act 1989] shall authorise a water authority to take legal proceedings in Scotland in respect of an offence against this Act.]

Textual Amendments

F1 Words in s. 39(1) substituted (15.11.2006) by [Scotland Act 1998 \(River Tweed\) Order 2006 \(S.I. 2006/2913\)](#), art. 1(2), [Sch. 4 para. 2](#)

F2 S. 39(1A) inserted by [Salmon Act 1986 \(c. 62, SIF 52:2\)](#), s. 26(2)

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Changes to legislation: There are currently no known outstanding effects for the Salmon and Freshwater Fisheries Act 1975, Part VI. (See end of Document for details)

- F3** S. 39(1B)(1C) inserted (1.4.1996) by 1995 c. 25, s. 105, **Sch. 15 para. 19** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F4** S. 39(4) repealed by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)
- F5** S. 39(5) added by Salmon Act 1986 (c. 62, SIF 52:2), s. 41, **Sch. 4 para. 13**
- F6** S. 39(5): By Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2, 4(2), **Sch. 1 para. 30(3)** it is provided that after the words "this section" there is substituted (E.W.) (1.12.1991) the words "the Water Resources Act 1991"
- F7** Words inserted by Water Act 1989 (c. 15, SIF 130), s. 141, **Sch. 17 para. 7(1)(10)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

Modifications etc. (not altering text)

- C2** By Salmon Act 1986 (c. 62, SIF 52:2), **ss. 32(6)(b)**, 43(4) it is provided that s. 39(1) is amended (E.W. and as mentioned in the said s. 43(4) (border rivers))

Marginal Citations

- M1** 1951 c.26(52:2).
M2 1951 c. 26.
M3 1991 c. 57.

40 River Severn.

This Act applies to the dams constructed by the Severn Commissioners under the ^{M4}Severn Navigation Act 1842 and the ^{M5}Severn Navigation Act 1853 and now vested in the British Waterways Board, and to all fish passes in those dams; and it shall accordingly be the Board's duty, subject to the provisions of this Act and to section 23 of the ^{M6}Severn Navigation Act 1881 (by virtue of which they have power to stop up the passes with the agreement of the water authority for the area) to maintain those passes in an efficient state.

Marginal Citations

- M4** 1842 c. xxiv (Sess. 2).
M5 1853 c. xlvi.
M6 1881 c. ccv.

[^{F8}40A Power to specify fish

The appropriate national authority may by order specify fish of any description for the purposes of any or all of the following—

- (a) section 1, 2, 25 or 27A above;
- (b) section 32 of the Salmon Act 1986;
- (c) paragraph 6 of Schedule 25 to the Water Resources Act 1991;
- (d) section 6(6) of the Environment Act 1995.]

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Textual Amendments

- F8** S. 40A inserted (12.11.2009 for specified purposes, 12.1.2010 in so far as not already in force) by Marine and Coastal Access Act 2009 (c. 23), ss. 221(1), 324(1)(c), 324(1)(d); S.I. 2009/3345, art. 2, Sch. para. 12

[^{F9}40B Orders: supplementary

- (1) An order under section 1, 25 or 40A above may make different provision for different purposes (and, in particular, different provision in relation to different areas or waters).
- (2) Such an order is to be made by statutory instrument.
- (3) A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of—
 - (a) either House of Parliament, in the case of an order made by the Secretary of State;
 - (b) the National Assembly for Wales, in the case of an order made by the Welsh Ministers.]

Textual Amendments

- F9** S. 40B inserted (12.11.2009 for specified purposes, 12.1.2010 in so far as not already in force) by Marine and Coastal Access Act 2009 (c. 23), ss. 222, 324(1)(c), 324(1)(d); S.I. 2009/3345, art. 2, Sch. para. 12

41 Interpretation.

- (1) In this Act, unless the context otherwise requires—
 - ^{F10}[“ the Agency ” means the Environment Agency;]
 - ^{F11}[“ the appropriate national authority ” means—
 - (a) the Secretary of State, except in relation to Wales (within the meaning of the Government of Wales Act 2006);
 - (b) in relation to Wales (within that meaning), the Welsh Ministers;]
 - “ authorised officer ” means—
 - (a) any officer of a water authority ^{F12} . . . ;
 - (b) any officer of a market authority acting within the area of the jurisdiction of that authority;
 - (c) any officer appointed by the Minister;
 - (d) any officer appointed in writing by the Fishmongers Company, or
 - (e) any police officer;
 - “ byelaw ” means a byelaw under this Act;
 - “ dam ” includes any weir or other fixed obstruction used for the purpose of damming up water;
 - ^{F13}[“ eels ” means any fish of the species *Anguilla anguilla* , and includes elvers and the fry of eels;]
 - ^{F14}[“ fish ” includes crustaceans and molluscs;]
 - ^{F15}[“ fish farm ” —

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(a) means a pond, stew, hatchery or other place used for keeping, with a view to their sale or to their transfer to other waters (including another fish farm), live fish, live eggs of fish, or foodstuff of fish, and

(b) includes any buildings used in connection with a place mentioned in paragraph (a) and the banks and margins of any water in such a place;]

“fishing licence” has the meaning assigned to it by section 25(2) above;

“fishing mill dam” means a dam used or intended to be used partly for the purpose of taking or facilitating the taking of fish, and partly for the purpose of supplying water for milling or other purposes;

“fishing weir” means any erection, structure or obstruction fixed to the soil either temporarily or permanently, across or partly across a river or branch of a river, and used for the exclusive purpose of taking or facilitating the taking of fish;

“Fishmongers Company” means the wardens and commonalty of the Mystery of Fishmongers in the City of London;

“fixed engine” includes—

(a) a stake net, bag net, putt or putcher;

(b) any fixed implement or engine for taking or facilitating the taking of fish;

(c) any net secured by anchors and any net or other implement for taking fish fixed to the soil, or made stationary in any other way; and

(d) any net placed or suspended in any inland or tidal waters unattended by the owner or a person duly authorised by the owner to use it for taking [^{F16} fish], and any engine, device, machine or contrivance, whether floating or otherwise, for placing or suspending such a net or maintaining it in working order or making it stationary;

“foreshore” includes the shore and bed of the sea and of every channel, creek, bay, estuary and navigable river as far up it as the tide flows;

[^{F17}“freshwater crayfish” means any freshwater decapod crustacean of the Families Astacidae, Cambaridae or Parastacidae;]

[^{F18}“freshwater fish” means any fish habitually living in fresh water, exclusive of—

(a) salmon, trout, eels, lampreys, smelt and any other fish of a kind which migrates from fresh to salt water, or from salt to fresh water, in order to spawn;

(b) any kind of crustacean other than freshwater crayfish and Chinese mitten crabs (*Eriocheir sinensis*); and

(c) any kind of mollusc;]

“general licence” means a licence granted under section 25(7) above;

[^{F19}“historic installation” has the meaning given by section 25 above;]

^{F20}
...

“immature” in relation to salmon means that the salmon is of a length of less than 12 inches, measured from the tip of the snout to the fork or cleft of the tail, and in relation to any other fish means that the fish is of a length less than such length (if any) as may be prescribed by the byelaws applicable to the water in which the fish is taken;

^{F21} [“inland water” means any area of inland waters within the meaning of the Water Resources Act 1991;]

[^{F22}“licensable means of fishing” has the meaning given by section 25 above;]

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“market authority” includes any corporation, local authority, body of trustees or other persons having power to maintain or regulate any market;

“migratory trout” means trout which migrate to and from the sea;

“mill” includes any erection for the purpose of developing water power, and “milling” has a corresponding meaning;

“the Minister” means, ^{F23} . . . , the Minister of Agriculture, Fisheries and Food;

“occupier” in relation to a fishery or premises includes any person for the time being in actual possession of the fishery or premises;

“owner” includes any person who is entitled to receive rents from a fishery or premises;

“river” includes a stream;

“rod and line” means single rod and line;

“salmon” means all fish of the salmon species and includes part of a salmon;

[^{F24} “ screen ” means a grating or other device which, or any apparatus the operation of which, prevents—

(a) the passage of salmon or migratory trout, and

(b) if the screen is required in connection with a fish farm, the passage of any fish farmed at that fish farm,

or any combination of devices or apparatus which, taken together, achieve that result;]

[^{F25} “ smelt ” means any fish of the species *Osmerus eperlanus* ;]

“trout” means any fish of the salmon family commonly known as trout, including migratory trout and char, and also includes part of a trout;

“unclean” in relation to any fish means that the fish is about to spawn, or has recently spawned and has not recovered from spawning.

^{F26}(2)

^{F26}(2A)

(3) Except so far as provision is made by paragraph 13 of Schedule 3 below, nothing in this Act shall be construed as authorising a water authority or any other person to take or use land or other property belonging to the Crown.

(4) In any byelaw made under an enactment repealed by the ^{M7}Salmon and Freshwater Fisheries Act 1923 “salmon” and “trout” have the meanings assigned to them by subsection (1) above.

Textual Amendments

F10 S. 41(1): definition of “the Agency” inserted (1.4.1996) by 1995 c. 25, s. 104(4)(with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

F11 Words in s. 41(1) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 221(2), 324(3); S.I. 2009/3345, art. 2, Sch. para. 12

F12 Words repealed by Water Act 1989 (c.15, SIF 130), ss. 141, 190, Sch. 17 para. 7(1)(11), Sch. 27 Pt. I (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

F13 Words in s. 41(1) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), ss. 223(2), 324(3); S.I. 2009/3345, art. 2, Sch. para. 13

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- F14** Words in s. 41(1) inserted (1.1.2011) by Marine and Coastal Access Act 2009 (c. 23), **ss. 223(3), 324(3)**; S.I. 2010/298, art. 2, Sch. para. 13
- F15** Words in s. 41(1) substituted (E.W.) (27.3.2009) by Aquatic Animal Health (England and Wales) Regulations 2009 (S.I. 2009/463), reg. 1(2), **Sch. 2 para. 3** (with reg. 2(2)); and words in s. 41(1) substituted (S.) (27.3.2009) by Aquatic Animal Health (Scotland) Regulations 2009 (S.S.I. 2009/85), reg. 1(2)(c), **Sch. 2 para. 3** (with reg. 2.)
- F16** Word in s. 41(1) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 14(2)**; S.I. 2009/3345, art. 2, Sch. para. 15(e)
- F17** Words in s. 41(1) inserted (1.1.2011) by Marine and Coastal Access Act 2009 (c. 23), **ss. 223(4), 324(3)**; S.I. 2010/298, art. 2, Sch. para. 13
- F18** Words in s. 41(1) substituted (1.1.2011) by Marine and Coastal Access Act 2009 (c. 23), **ss. 223(5), 324(3)**; S.I. 2010/298, art. 2, Sch. para. 13
- F19** Words in s. 41(1) inserted (1.1.2011) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 14(3)**; S.I. 2010/298, art. 2, Sch. para. 13
- F20** S. 41(1): definition of “grating” repealed (1.1.1999) by 1995 c. 25, ss. 105, 120(3), Sch. 15 para. 20, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 4**
- F21** Definition in s. 41(1) substituted (E.W.) (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 1 para. 30(4)**
- F22** Words in s. 41(1) inserted (1.1.2011) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 14(4)**; S.I. 2010/298, art. 2, Sch. para. 13
- F23** Words repealed by Water Act 1989 (c.15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)
- F24** S. 41(1): definition of “screen” inserted (1.1.1999) by 1995 s. 105, Sch. 15 para. 20(b) (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 4**
- F25** Words in s. 41(1) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 223(6), 324(3)**; S.I. 2009/3345, art. 2, Sch. para. 13
- F26** S. 41(2)(2A) repealed by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

Marginal Citations

M7 1923 c. 16.

42 Repeals etc.

- (1) The enactments specified in Schedule 5 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (2) In section 18(1) of the ^{M8}Sea Fish (Conservation Act 1967 (enforcement of orders in relation to salmon and migratory trout) for paragraph (a) there shall be substituted the following paragraph:—
 - “(a) section 31 (1)(d) of the Salmon and Freshwater Fisheries Act 1975 (which confers power of seizure) shall apply as if the reference in it to that Act included a reference to this Act, and sections 36(1) and (2) of that Act, and paragraph 8 of Schedule 4 (all of which contain ancillary provisions), shall be construed accordingly as including references to that Act as applied by this subsection;”
- (3) In so far as any instrument made or other thing whatsoever done under any enactment repealed by this Act could have been made or done under a corresponding enactment in this Act, it shall not be invalidated by the repeal of that enactment but shall have effect as if made or done under that corresponding enactment; and for the purposes

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of this provision anything which under section 93(2) of the ^{M9}Salmon and Freshwater Fisheries Act 1923 had effect as if done under any enactment in that Act shall, so far as may be necessary for the continuity of the law, be treated as done under the corresponding enactment in this Act.

- (4) Any enactment or other document referring to an enactment repealed by this Act or by the ^{M10}Salmon and Freshwater Fisheries Act 1923 shall, so far as may be necessary for preserving its effect, be construed as referring, or as including a reference, to the corresponding enactment in this Act.
- (5) Nothing in this Act shall affect the admissibility in evidence of any instrument made under the ^{M11}Salmon Fishery Act 1865.
- (6) Section 254(2)(c) of the ^{M12}Local Government Act 1972 (power of Secretary of State to amend, etc., enactments by order) shall apply to this Act as if it had been passed before 1st April 1974.
- [^{F27}(7) The ^{M13}Water Act 1973 shall have effect as if the functions conferred on water authorities by section 28(1) and (2) above were conferred by it.]
- (8) Nothing in this Act shall affect the legal right of any conservators, directors, commissioners, undertakers or other persons to dredge, scour, cleanse or improve any navigable river, canal or other inland navigation.
- (9) Nothing in this Act shall be taken as prejudicing the operation of section 38 of the ^{M14}Interpretation Act 1889 (which relates to the effect of repeals).

Textual Amendments

F27 S. 42(7) repealed (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), 194(9), [Sch. 26 paras. 3\(1\)\(2\), 17, 40\(4\), 41\(1\), 57\(6\), 58](#))

Modifications etc. (not altering text)

C3 The text of s. 42(1)(2), Sch. 5 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

Marginal Citations

M8 1967 c. 84.
M9 1923 c. 16.
M10 1923 c. 16.
M11 1865 c. 121.
M12 1972 c. 70.
M13 1973 c. 37.
M14 1889 c. 63.

43 Citation etc.

- (1) This Act may be cited as the Salmon and Freshwater Fisheries Act 1975.
- (2) Subject to section 39 above and subsection (3) below, this Act extends only to England and Wales.

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- (3) The following provisions of this Act, namely—
section 28(1) and (2) above,
section 39(1) [^{F28},(1A)] [^{F29}, (1B),(1C)] [^{F30}(4) and (5)] above,
section 42(1) above, so far as it relates to the repeal of section 15 of the ^{M15}Salmon
and Freshwater Fisheries Act 1972 and section 18 of the ^{M16}Water Act 1973,
paragraph 3 of Schedule 4 below,
extend to Scotland.
- (4) This Act shall come into force on 1st August 1975.

Textual Amendments

F28 Words inserted by [Salmon Act 1986 \(c. 62, SIF 52:2\)](#), **s. 26(3)**

F29 Words in s. 43(3) inserted (1.4.1996) by [1995 c. 25, s. 105](#), **Sch. 15 para. 21** (with [ss. 7\(6\), 115, 117](#));
[S.I. 1996/186, art. 3](#)

F30 Words substituted by [Salmon Act 1986 \(c. 62, SIF 52:2\)](#), s. 41, **Sch. 4 para. 14**

Marginal Citations

M15 [1972 c. 37.](#)

M16 [1973 c. 37.](#)

Status:

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Changes to legislation:

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