



# Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003

2003 asp 15

VALID FROM 01/04/2005

## PART 4

### ADMINISTRATION OF FRESHWATER FISHERIES

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

- (1) Where the Scottish Ministers are satisfied that, if proposals submitted to them under this section were implemented, there would be a significant increase in the availability of fishing for freshwater fish in inland waters to which the proposals relate, they may, subject to subsection (3) below, make an order (in this Act 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, or such part thereof as the Scottish Ministers think appropriate, of any river; 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; and
  - (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; and

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- (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 subsection (3)(a) above 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;
  - (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 subsection (3)(c) above 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 subsection (8) below, a protection order may provide that—
- (a) it shall cease to have effect on a date specified therein; and

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(b) any complaints concerning the implementation of proposals must be received by the 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 to this Act shall apply to such an order.

(8) Where the Scottish Ministers have received complaints under subsection (7) above which appear to them to be well-founded (that is to say, neither insignificant nor frivolous), they shall, without prejudice to the competence of their making a fresh protection order in accordance with this section, not renew the protection order under that subsection.

(9) Subject to subsections (7) and (8) above, schedule 3 to this Act shall have effect as to the procedure in the making, variation and revocation of a protection order.

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

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

(12) For the purposes of this section and section 49 of this Act, “inland waters” does not include the tidal parts of rivers.

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

(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 subsection (1) above 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;

(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 section and section 50 of, and schedule 3 to, this Act “prescribed area” means the area prescribed in a protection order made under section 48 of this Act.

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

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

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- (a) in the vicinity of any waters in the prescribed area for the purpose of exercising any of the powers conferred by section 49(2) of this Act;
  - (b) for the purpose of affixing or maintaining a copy of any order or notice which that person is required to affix or maintain by any provision of schedule 3 to this Act;
  - (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 to this Act shall have a right to enter land for the purpose of affixing or maintaining a copy of any notice or order which that person 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 section 49(2) of this Act or subsection (1) above; or
  - (b) any person referred to in subsection (2) above to exercise the powers conferred by that subsection,
- 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 subsection (2) above shall be sufficient warrant for the exercise of any power which has been conferred on that warden or such a person.
- (5) In this section “land” does not include any building.

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

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.

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