



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

2003 asp 15

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.
- [^{F1}(2A) In prescribing the area in relation to which a protection order is made, the Scottish Ministers need not prescribe the entire area to which the proposals, whether modified or not, relate.]
- (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 [^{F2}and subject to subsection (4B)], modify them.
- [^{F3}(4A) At any time, the Scottish Ministers may, after consultation with the person submitting the proposals referred to in subsection (3)(a), modify in such way as they think fit—
- (a) those proposals, or
 - (b) those proposals as modified by the person by virtue of subsection (4) above.
- (4B) Proposals modified by the Scottish Ministers by virtue of subsection (4A) may not be modified by the person referred to in that subsection; but that person may at any time withdraw 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.

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- (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
 - (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) [F4 or (4A)] 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.

Textual Amendments

- F1** S. 48(2A) inserted (1.8.2007) by Aquaculture and Fisheries (Scotland) Act 2007 (asp 12), s. 45(2), **Sch. para. 6(4)(a)** (with s. 39); S.S.I. 2007/333, art. 2(1)
- F2** Words in s. 48(4) inserted (1.8.2007) by Aquaculture and Fisheries (Scotland) Act 2007 (asp 12), s. 45(2), **Sch. para. 6(4)(b)** (with s. 39); S.S.I. 2007/333, art. 2(1)
- F3** S. 48(4A) - S. 48(4B) inserted (1.8.2007) by Aquaculture and Fisheries (Scotland) Act 2007 (asp 12), s. 45(2), **Sch. para. 6(4)(c)** (with s. 39); S.S.I. 2007/333, art. 2(1)
- F4** Words in s. 48(10) inserted (1.8.2007) by Aquaculture and Fisheries (Scotland) Act 2007 (asp 12), s. 45(2), **Sch. para. 6(4)(d)** (with s. 39); S.S.I. 2007/333, art. 2(1)

Commencement Information

- I1** S. 48 in force at 1.4.2005 by S.S.I. 2005/174, art. 2

Changes to legislation:

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