



# Freshwater and Salmon Fisheries (Scotland) Act 1976

## 1976 CHAPTER 22

An Act to make new provision with respect to freshwater and salmon fisheries in Scotland; and for connected purposes. [10th June 1976]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

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

- (1) Where the Secretary of State is satisfied that, if proposals submitted to him 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, he 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 Secretary of State may prescribe, which shall be the catchment area or such part thereof, as the Secretary of State thinks 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 Secretary of State shall not make a protection order unless—
  - (a) he has 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) he has consulted a body which in his opinion is representative of persons wishing to fish for freshwater fish in inland waters in Scotland; and

- (c) he is satisfied that, if such proposals were implemented, fishing for freshwater fish in the area to be prescribed by him in the protection order would be available—
    - (i) to a degree, which he considered reasonable having regard in particular to what is, in his 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 he considered reasonable; and
  - (d) he has taken into consideration the need for conservation of any species of fish and has carried out such consultations in this regard as he considers 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 Secretary of State may at any time in relation to the proposals direct;
- and the person submitting such proposals to the Secretary of State may at any time withdraw them or, after consultation with him, modify them.
- (5) In deciding for the purposes of subsection (3)(c) above whether the terms and conditions referred to therein are reasonable, the Secretary of State 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 Secretary of State considers relevant.
- (6) The Secretary of State may at any time require an owner or occupier of a right of fishing for freshwater fish in a prescribed area to furnish him with information regarding the implementation in that area of proposals in so far as they relate to that right.
- (7) A protection order may provide that it shall cease to have effect on a date specified therein ; but if on that date the Secretary of State has received no complaints concerning the implementation of proposals, or if, in his opinion, the complaints received by him are insignificant or frivolous, he may make a protection order

renewing that protection order without further procedure, except that paragraph 7 of Schedule 1 to this Act shall apply to such an order.

- (8) Any person contravening a prohibition contained in a protection order shall be guilty of an offence and liable on summary conviction to a fine not exceeding £25 or, in the case of a second or subsequent conviction, not exceeding £50.
- (9) Without prejudice to the operation of section 312(c) of the Criminal Procedure (Scotland) Act 1975, any person who attempts to commit or does any act preparatory to the commission of such an offence as is referred to in subsection (8) above shall be guilty of an offence and shall be punishable in like manner as for the said offence.
- (10) A protection order shall be made by statutory instrument and may be varied or revoked by a subsequent order so made; and, subject to subsection (7) above, Schedule 1 to this Act shall have effect as to the procedure in the making, variation and revocation of a protection order.
- (11) In subsections (1), (3)(c), (6) and (7) above "proposals" means proposals as originally submitted to the Secretary of State or, as the case may be, as modified under subsection (4) above.

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

- (1) For the purpose of securing compliance with a protection order, the Secretary of State may appoint as wardens such persons as he thinks fit from among persons nominated to him 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 he has 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 he has 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 Powers of entry and obstruction of wardens etc.**

- (1) A warden shall have a 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 on him by section 2(2) of this Act;
  - (b) for the purpose of affixing or maintaining a copy of any order or notice which he is required to affix or maintain by any provision of Schedule 1 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 Secretary of State under the said Schedule 1 shall have a right to enter land for the purpose of affixing or maintaining a copy of any notice or order which he 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 on him by section 2(2) of this Act or subsection (1) above; or
  - (b) any person referred to in subsection (2) above to exercise the powers conferred on him by that subsection,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding £50, or, in the case of a second or subsequent conviction, to a fine not exceeding £100 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 Secretary of State or of the authorisation by the Secretary of State 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 thereon.

#### **4 Legal status of right of freshwater fishing**

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 applies, and the right of fishing so authorised shall, for the purposes of succession to that right, be deemed to be heritable property.

#### **5 Exchequer contributions towards organisations developing freshwater fisheries**

The Secretary of State may, in accordance with arrangements made by him with the approval of the Treasury, make payments out of money provided by Parliament of such amount and subject to such conditions as he may determine to any organisation approved by him and having as their object, or one of their 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.

#### **6 Penalties for offences against fisheries enactments**

- (1) Schedule 2 to this Act shall have effect with respect to the penalties for offences against the enactments relating to salmon and freshwater fisheries specified in column 1 of that Schedule (of which a rough description is given in column 2 thereof) in place of the penalties in force for such offences at the passing of this Act: and in that Schedule—
- (a) column 3 shows whether the offence is punishable on summary conviction (in that column referred to as summarily) or on indictment or either in one way or the other;
  - (b) columns 4 and 5 show the maximum penalty by way of fine or imprisonment which may be imposed on the summary conviction of a person for a first offence and a second or subsequent offence respectively; and

- (c) column 6 shows the maximum penalty by way of fine or imprisonment which may be imposed on a person convicted of the offence on indictment.
- (2) Nothing in this section shall affect the penalty which may be imposed on conviction of an offence against any of the said enactments committed before the passing of this Act.

## **7 Fish farmers not to be guilty of contravention of certain enactments**

- (1) Subject to subsection (2) below, a person shall not be guilty of a contravention of any of the enactments specified in Part I of Schedule 3 to this Act in respect of any act or omission if he carries out the act or the omission takes place within a fish farm in the course of the operation of a fish farm.
- (2) There shall be no contravention of paragraph (b) or (c) of section 4 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951, by virtue of subsection (1) above, in respect of an act referred to in the said paragraph (b) or (c) only if the act is carried out with the consent of the Secretary of State.
- (3) For the purposes of subsection (1) above, the act of selling or exporting fish by or on behalf of a person who has reared the fish in a fish farm shall be deemed to be an act carried out within a fish farm in the course of the operation of that farm.
- (4) In any proceedings for an offence under any of the enactments specified in Part II of Schedule 3 to this Act in relation to a boat or other thing mentioned in any such enactment which is not in a fish farm, it shall be a defence for the person charged with such offence to prove that the act or omission complained of was necessary for the purpose of the operation of a fish farm.

## **8 Application of Act to Crown**

- (1) This Act shall apply to land an interest in which belongs to Her Majesty in right of the Crown and land an interest in which belongs to a government department or is held in trust for Her Majesty for the purposes of a government department; but in its application to any land an interest in which belongs or is held as aforesaid this Act shall have effect subject to such modifications as may be prescribed by regulations made by the Secretary of State.
- (2) Any regulations made by the Secretary of State under this section shall be embodied in a statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **9 Interpretation**

- (1) In this Act, unless the context otherwise requires—
  - " fish farm " has the same meaning as in section 10(1) of the Diseases of Fish Act 1937 ;
  - " freshwater fish " has the same meaning as in section 24(1) of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951;
  - " inland waters " includes all rivers (other than their tidal parts) and their tributary streams, and all waters, watercourses and lochs whether natural or artificial which drain or drain to some extent into the sea ;
  - " land " includes land covered by water;
  - " prescribed area " means the area prescribed in a protection order;

- (2) References to an occupier of a right of fishing for freshwater fish are references to a person who is in possession of that right as tenant under a lease of land to which such a right pertains or under a contract which by virtue of section 4 of this Act is deemed to be a lease, and, for the purposes of this subsection, "tenant" and "lease" include "subtenant" and "sublease" respectively.

**10 Short title and extent**

- (1) This Act may be cited as the Freshwater and Salmon Fisheries (Scotland) Act 1976.
- (2) This Act extends to Scotland only.

## SCHEDULES

### SCHEDULE 1

Section 1.

#### PROVISIONS AS TO MAKING, VARIATION AND REVOCATION OF PROTECTION ORDERS

##### *Making of protection order*

- 1 Before the Secretary of State makes a protection order he shall require a person from whom he has received proposals under section 1(3)(a) of this Act to give notice in such form as the Secretary of State may direct—
  - (a) stating the general effect of those proposals ;
  - (b) naming a place or places where a copy of the proposals and any map accompanying the proposals may be inspected free of charge at all reasonable hours; and
  - (c) specifying the time (not being less than 28 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the proposals may be made.
- 2 The notice to be given under paragraph 1 above shall be given by publication in the Edinburgh Gazette and in such number of such newspapers as the Secretary of State may direct.
- 3 The Secretary of State may direct that, in addition to publication of the notice as required by paragraph 2 above, a copy or copies of it shall be affixed by a person duly authorised in writing by the Secretary of State to some conspicuous object or objects on the banks of any waters to which the proposals relate or of such other waters as the Secretary of State may direct and at such number of places as he may direct.
- 4 If no representations or objections are duly made, or if any so made are withdrawn, the Secretary of State may make a protection order.
- 5
  - (1) If any representation or objection duly made is not withdrawn, the Secretary of State may, after considering the same, forthwith make a protection order or may cause a local inquiry to be held.
  - (2) The Secretary of State shall appoint a person to hold the inquiry and to report thereon to him.
  - (3) Notification of the time when and the place where the inquiry is to be held shall be sent to any person who has duly made and has not withdrawn representations or objections to the proposals, and shall be published in such newspaper or newspapers as the Secretary of State may direct.
  - (4) The person appointed to hold the inquiry may, on the motion of any party thereto or on his own motion, serve a notice in writing on any person requiring him to attend at the time and place set forth in the notice to give evidence or to produce any books or documents in his custody or under his control which relate to any matter in question at the inquiry ;

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*Status: This is the original version (as it was originally enacted).*

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Provided that—

- (i) no person shall be required in obedience to such a notice to attend at any place which is more than ten miles from the place where he resides unless the necessary expenses are paid or tendered to him ; and
  - (ii) nothing in this sub-paragraph shall empower the person appointed to hold the inquiry to require any person to produce any book or document or to answer any question which he would be entitled, on the ground of privilege or confidentiality, to refuse to produce or to answer if the inquiry were a proceeding in a court of law.
- (5) The person appointed to hold the inquiry may administer oaths and examine witnesses on oath and may accept, in lieu of evidence on oath by any person, a statement in writing by that person.
- (6) Any person who refuses or wilfully neglects to attend in obedience to a notice under sub-paragraph (4) above or to give evidence or who wilfully alters, suppresses, conceals, destroys, or refuses to produce, any book or document which he may be required to produce by any such notice shall be liable on summary conviction to a fine not exceeding £20 or to imprisonment for a period not exceeding 3 months.
- (7) The Secretary of State may make orders as to the expenses incurred by him in relation to the inquiry (including such reasonable sum as he may determine for the services of the person appointed to hold the inquiry) and as to the expenses incurred by the parties to the inquiry and as to the parties by whom such expenses shall be paid.
- (8) Any order of the Secretary of State under sub-paragraph (7) above requiring any party to pay expenses may be enforced in like manner as a recorded decree arbitral.

6       After considering the report of the person appointed to hold the inquiry in pursuance of paragraph 5 above and any representations or objections which were duly made, the Secretary of State may make a protection order.

7       As soon as may be after a protection order has been made—

- (a) the Secretary of State shall publish the making of the order in the Edinburgh Gazette and in such number of local newspapers circulating in the area to which the order relates as he thinks fit; and
- (b) a person duly authorised in writing by the Secretary of State or a warden shall affix and maintain a copy or copies of the order and such other notice as the Secretary of State may consider necessary of the incidence of the order to some conspicuous object or objects, at such places as the Secretary of State may direct, on the banks of any waters to which the order relates or elsewhere.

#### *Variation of protection order*

8       Paragraph 7 above shall apply to an order varying a protection order as it applies to a protection order.

#### *Revocation of protection order*

9       (1) Before the Secretary of State makes an order revoking a protection order, he may by notice make such publication as he thinks fit of the general effect of the proposed revocation and specify a time within which, and the manner in which, representations or objections with respect to the proposed revocation may be made.



- (2) The Secretary of State may cause a copy or copies of the notice referred to in sub-paragraph (1) above to be affixed by a person duly authorised by him in writing to some conspicuous object or objects on the banks of such waters at such places as the Secretary of State may direct.
- (3) If no representations or objections are duly made, or if any so made are withdrawn, the Secretary of State may make the order revoking the protection order.
- (4) If any representation or objection duly made is not withdrawn, the Secretary of State may forthwith make the order or may cause a local inquiry to be held.
- (5) Sub-paragraphs (2) to (8) of paragraph 5 above shall apply in relation to an inquiry under this paragraph as they apply in relation to an inquiry under that paragraph, but as if in sub-paragraph (3) of that paragraph for the word "proposals" there were substituted the words "proposed revocation".
- (6) Paragraphs 6 and 7 above shall apply in relation to an order revoking a protection order as they apply in relation to a protection order, but as if in paragraph 6 for the reference to paragraph 5 above there were substituted a reference to this paragraph.

*Publication of Orders*

- 10 The Secretary of State shall cause to be published each year a list of prescribed areas which are the subject of protection orders.

## SCHEDULE 2

Section 6.

PENALTIES FOR OFFENCES AGAINST ENACTMENTS  
RELATING TO SALMON AND FRESHWATER FISHERIES

1	2	3	4	5	6
Provision of enactment creating the offence	Rough description of offence	Mode of prosecution	Penalty for first offence on summary conviction	Penalty for second and subsequent offence on summary conviction	Penalty for conviction on indictment
<i>The Salmon Fisheries (Scotland) Act 1868 (c. 123).</i> Section 15(1)	Fishing for salmon in annual close season, other than by rod and line.	Summarily.	£100.	£200.	—

*Status: This is the original version (as it was originally enacted).*

1	2	3	4	5	6
Provision of enactment creating the offence	Rough description of offence	Mode of prosecution	Penalty for first offence on summary conviction	Penalty for second and subsequent offence on summary conviction	Penalty for conviction on indictment
Section 15(2) {	(a) Fishing in weekly close time (other than by rod and line). (b) Fishing on Sundays by rod and line.	} Summarily.	£100.	£200.	—
Section 15(3)	(c) Contravention of any bye-law relating to weekly close time. Fishing for salmon by rod and line during close season contrary to bye-law provisions.	Summarily.	£50.	£100.	—
Section 15(4)	Using a net with a mesh contrary to bye-law provisions.	Summarily.	£50.	£100.	—
Section 15(5)	Using a net to catch salmon at falls etc.	Summarily.	£100.	£200.	—
Section 15(6)	Preventing the passage of or catching salmon at fish passes.	Summarily.	£100.	£200.	—
Section 15(8)	Contravention of any bye-law.	Summarily.	£100.	£200.	—
Section 18	Buying, selling or	Summarily.	£50.	£100.	—

1	2	3	4	5	6
Provision of enactment creating the offence	Rough description of offence	Mode of prosecution	Penalty for first offence on summary conviction	Penalty for second and subsequent offence on summary conviction	Penalty for conviction on indictment
Section 19	possessing salmon roe. Buying, selling or possessing young salmon; disturbing spawn etc.	Summarily.	£50.	£100.	—
Section 20	Buying, selling, taking or possessing unclean or unseasonable salmon.	Summarily.	£50.	£100.	—
Section 21	Buying or selling or having in possession salmon taken in close season.	Summarily.	£50.	£100.	—
Section 23	Failing to remove boats, nets, etc. in close season.	Summarily.	£100.	£200.	—
Section 24	Failing to observe weekly close time arrangements for nets.	Summarily.	£100.	£200.	—
<i>The Freshwater Fish (Scotland) Act 1902 (c. 29).</i>					
Section 1	Fishing for or having possession of	Summarily.	£50.	£100.	—

*Status: This is the original version (as it was originally enacted).*

1	2	3	4	5	6
Provision of enactment creating the offence	Rough description of offence	Mode of prosecution	Penalty for first offence on summary conviction	Penalty for second and subsequent offence on summary conviction	Penalty for conviction on indictment
<p><i>The Trout (Scotland) Act 1933 (c. 35).</i></p> <p>Section 2</p>	<p>trout in close season.</p> <p>Purchase or sale of trout under 8 inches or between 1st September and 31st March.</p>	<p>Summarily.</p>	<p>£50.</p>	<p>£100.</p>	<p>—</p>
<p><i>The Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (c. 26).</i></p> <p>Section 1 .</p>	<p>Fishing for salmon without legal right or written permission.</p>	<p>Summarily.</p>	<p>£50.</p>	<p>£100.</p>	<p>—</p>
<p>Section 2</p>	<p>Fishing by illegal methods.</p>	<p>Summarily.</p>	<p>£100.</p>	<p>£200.</p>	<p>—</p>
<p>Section 3</p>	<p>Illegal fishing by two or more persons acting together.</p>	<p>(a) Summarily.</p> <p>(b) On indictment.</p>	<p>£200 or 3 months imprisonment.</p> <p>—</p>	<p>£400 and/ or 6 months imprisonment.</p> <p>—</p>	<p>—</p> <p>Unlimited fine and/ or 2 years imprisonment.</p>

1	2	3	4	5	6
Provision of enactment creating the offence	Rough description of offence	Mode of prosecution	Penalty for first offence on summary conviction	Penalty for second and subsequent offence on summary conviction	Penalty for conviction on indictment
Section 4	Use of explosives, poisons and electrical devices.	(a) Summarily.	£200 or 3 months imprisonment.	£400 and/or 6 months imprisonment.	—
		(b) On indictment.	—	—	Unlimited fine and/or 2 years imprisonment.
Section 6	Unauthorised removal of dead salmon or trout.	Summarily.	£100.	£200.	—
Section 10(6)	Obstruction of a water bailiff, constable etc.	Summarily.	£100 and/or 3 months imprisonment.	£100 and/or 3 months imprisonment.	—
Section 13 {	(a) Fishing for salmon in the weekly close time (other than by rod and line).	} Summarily.	£100.	£200.	—
	(b) Fishing for salmon on Sundays by rod and line.				
Section 15(2)	Refusing or neglecting to provide statistics.	Summarily.	£100.	£100.	—
Section 16	Contravention of regulations relating to the packing of salmon and trout.	Summarily.	£50.	£100.	—

## SCHEDULE 3

Section 7.

## ENACTMENTS TO WHICH SECTION 7 APPLIES

## PART I

## ENACTMENTS TO WHICH SUBSECTION (1) APPLIES

- 1 In the Solway Act 1804
  - (a) section I (imposition of close time);
  - (b) section II (requirement to remove boats, etc.);
  - (c) section XI (selling fish out of season, and having fish in possession);
  - (d) section XV (regulation of size of mesh of nets).
- 2 In the Tweed Fisheries Act 1857—
  - (a) section XLV (prohibition against use of any pout net or net during close season);
  - (b) section LXXII (requirement to return unclean fish to river);
  - (c) section LXXIV (prohibition against destruction of spawn or fry).
- 3 In the Tweed Fisheries Amendment Act 1859—
  - (a) section VI (offence of fishing in close season);
  - (b) section X (offence of having in possession during close season salmon taken or caught in the river);
  - (c) section XI (boats, nets etc. to be removed in close season);
  - (d) section XIII (prohibits drawing or using in the river nets with mesh less than prescribed size).
- 4 Section 3 of the Salmon Acts Amendment Act 1863 (export of unclean salmon, or salmon caught during certain times, prohibited).
- 5 In the Salmon Fisheries (Scotland) Act 1868—
  - (a) section 15(1) (fishing for salmon in close season other than by rod and line);
  - (b) section 15(2) (fishing for salmon in weekly close time);
  - (c) section 15(4) (fishing for salmon with a net having a mesh contrary to any byelaw);
  - (d) section 20 (buying, selling, taking or possessing unclean or unseasonable salmon);
  - (e) section 21 (buying, selling, exposing for sale or having in possession salmon taken in close season);
  - (f) section 23 (boats, nets etc., to be removed in close season).
- 6 In the Freshwater Fish (Scotland) Act 1902, section 1 (fishing for or having possession of trout in close season).
- 7 In the Trout (Scotland) Act 1933, section 2 (purchase or sale of trout under 8" or between 1 September and 31 March).
- 8 In the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951—
  - (a) section 2 (fishing for salmon and freshwater fish by illegal methods);
  - (b) paragraphs (b) and (c) of section 4 (prohibition against using poisons and electrical devices for destruction of fish);

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*Status: This is the original version (as it was originally enacted).*

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(c) section 13 (fishing for salmon in weekly close time).

## **PART II**

### ENACTMENTS TO WHICH SUBSECTION (4) APPLIES

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| 9  | In the Solway Act 1804, section II (requirement to remove boats, etc.).                                    |
| 10 | In the Tweed Fisheries Amendment Act 1859, section XI (boats, nets, etc. to be removed in close season).   |
| 11 | In the Salmon Fisheries (Scotland) Act 1868, section 23 (boats, nets, etc. to be removed in close season). |