



# Salmon Conservation (Scotland) Act 2001

## 2001 asp 3

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**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 11th January 2001 and received Royal Assent on 14th February 2001**

An Act of the Scottish Parliament to make further provision about the conservation of salmon and sea trout.

### 1 Conservation of salmon and sea trout S

After section 10 of the Salmon Act 1986 (c.62) (“the 1986 Act”) insert—

#### “10A Regulations to assist conservation of salmon

- (1) An application may be made by any person who may make an application in relation to an annual close time order under section 6(4) of this Act to the Scottish Ministers to make regulations under subsection (3) below.
- (2) An application under subsection (1) above shall be in writing and shall contain the applicant’s proposals, including—
  - (a) a general description of the proposals;
  - (b) a statement as to why the applicant considers that the proposals are necessary or expedient; and
  - (c) a statement as to the general effect of the proposals.
- (3) The Scottish Ministers shall have power to make regulations—
  - (a) on an application under subsection (1) above; or
  - (b) otherwise,if they consider that it is necessary or expedient to do so for the conservation of salmon.
- (4) For the purposes of subsection (3) above, regulations shall not be taken to be for something other than the conservation of salmon by reason only that they also have effect in relation to the management of salmon fisheries for exploitation.
- (5) In considering whether or not it is necessary or expedient to make regulations under subsection (3) above, the Scottish Ministers shall have regard to any

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representations made to them by any person having an interest in fishing for or taking salmon, or in the environment.

- (6) Regulations under this section may be made in relation only to salmon fisheries; and, subject to subsection (7)(b) below, such regulations shall not be made in respect of matters in relation to which the Scottish Ministers have power to make regulations or orders under any other provision of this Act or under any other enactment relating to the management of salmon or freshwater fisheries.
- (7) Without prejudice to the generality of the power conferred by subsection (3) above, regulations under this section may—
  - (a) specify the type of information about any salmon fishery that a district salmon fishery board may require from the proprietor of the fishery and the time within which such information shall (if required) be supplied;
  - (b) specify baits and lures for the purposes of the definition of “rod and line” in section 24 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951.

#### **10B Powers of enforcement, entry, search and arrest**

- (1) Section 10(1)(d) of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (c.26) (powers of water bailiffs) and, in relation thereto, subsections (3) and (6) of that section shall apply to a water bailiff, a person appointed by the Scottish Ministers under subsection (5) of that section and any constable for the purposes of the enforcement of any provision of any regulations made under section 10A of this Act as they apply to a water bailiff for the purposes of that Act; and for this purpose the reference in the said section 10(1)(d) to forfeiture in pursuance of that Act shall be construed as a reference to forfeiture by virtue of section 10C of this Act.
- (2) Section 27 of the Salmon Fisheries (Scotland) Act 1868 (c.123) (constables or water bailiffs entering upon land) shall apply to a water bailiff and any constable for the purposes of the enforcement of any provision of any regulations made under section 10A of this Act as it applies to them for the purposes of the enforcement of the provisions of the said Act of 1951.
- (3) Regulations under section 10A of this Act may make provision in relation to a water bailiff, a person appointed by the Scottish Ministers under section 10(5) of the said Act of 1951 or any constable conferring on him such further powers of enforcement, in relation to the regulations, as the Scottish Ministers consider necessary or expedient for the conservation of salmon.
- (4) Section 11 of the said Act of 1951 (powers of entry and search) and, in relation thereto, section 10(3) and (6) of that Act shall apply to an offence against any provision of any regulations made under section 10A of this Act as they apply to an offence against any of the provisions of sections 3 and 4 of that Act; and for this purpose any reference in the said section 11 to an offence against any of the provisions of sections 3 and 4 of that Act shall be construed as a reference to an offence against any of the provisions of any regulations made under section 10A of this Act.
- (5) Section 12 of the said Act of 1951 (apprehension of offenders) and, in relation thereto, section 10(3) and (6) of that Act shall apply to an offence against any provision of any regulations made under section 10A of this Act as they apply

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to an offence against the provisions of Part I of that Act; and for this purpose any reference in the said section 12 to an offence against the provisions of Part I of that Act shall be construed as a reference to an offence against the provisions of any regulations made under section 10A of this Act.

### **10C Offences, penalties, forfeiture etc.**

- (1) Any person who—
  - (a) acts in contravention of; or
  - (b) fails to take any action required of him by, or to comply with any requirement imposed on him by,any provision of any regulations made under section 10A of this Act, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (2) Sections 7(3) (evidence), 19 (forfeiture) and 20 (disposal of seized fish) of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (c.26) shall apply in the case of a conviction under this section of this Act as they apply in the case of a conviction against Part I, section 7 or section 13, as the case may be, of that Act.
- (3) For the purpose of subsection (2) above—
  - (a) the reference in the said section 7(3) to “this section” shall be construed as a reference to this section of this Act;
  - (b) any reference in the said section 19 to an offence against Part I or section 13 of that Act shall be construed as a reference to an offence against any provision of any regulations made under section 10A of this Act; and
  - (c) the reference in the said section 20 to “this Act” shall be construed as a reference to regulations made under section 10A of this Act.

### **10D Regulations**

- (1) Regulations under section 10A of this Act shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (2) Such regulations may make—
  - (a) provision generally in relation to any district or river, or in relation to any time or season;
  - (b) different provision for different districts or different parts of a district, or for different parts of a river, or for different cases or classes of case.
- (3) Paragraphs 3 to 8 of Schedule 1 to this Act shall apply to the making of regulations under section 10A(3)(a) of this Act as they apply to the making of a designation order and for this purpose—
  - (a) references to an applicant, and to an application, under paragraph 1 shall be construed respectively as references to an applicant, and to an application, under the said section 10A; and
  - (b) references to a designation order shall be construed as references to the regulations.

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- (4) Paragraphs 3 to 8 of Schedule 1 to this Act shall apply to the making of regulations under section 10A(3)(b) of this Act as they apply to the making of a designation order and for this purpose—
- (a) references to an applicant and to an application shall be omitted;
  - (b) references to a designation order shall be construed as references to the regulations;
  - (c) the reference in paragraph 3 to the persons who shall be consulted shall be construed as including, in particular, such district salmon fishery boards as the Scottish Ministers consider appropriate; and
  - (d) paragraph 4(3) shall be omitted.

### **10E Application to River Esk**

Sections 10A to 10D of this Act shall apply to so much of the River Esk, including its banks and tributary streams, as is situated in Scotland; and, for the purpose of section 10A(1) of this Act, section 6(4) of this Act shall be deemed to apply to the River Esk, its banks and tributary streams.”.

## **2 Amendment of section 19 of the 1986 Act S**

In section 19 of the 1986 Act (which provides that Part I of that Act shall not apply to the River Esk), at the beginning insert “ Subject to section 10E of this Act, ”.

## **3 Commencement and short title S**

- (1) The preceding provisions of this Act shall come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.
- (2) This Act may be cited as the Salmon Conservation (Scotland) Act 2001.

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### **Subordinate Legislation Made**

**P1** [S. 3\(1\)](#) power fully exercised: 15.4.2001 appointed by [S.S.I. 2001/116](#), [art. 2](#)

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