



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.

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,and in this subsection " the River Tweed " means " the river " as denned by the Tweed Fisheries (Amendment) Act 1859 and any byelaw amending that definition.
- (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

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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) Nothing in this Act shall authorise a water authority to acquire compulsorily under this Act any land in Scotland.

40 River Severn

This Act applies to the dams constructed by the Severn Commissioners under the Severn Navigation Act 1842 and the 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 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.

41 Interpretation

- (1) In this Act, unless the context otherwise requires—
 - " authorised officer " means—
 - (a) any officer of a water authority acting within the water authority area;
 - (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;
 - " eels " includes elvers and the fry of eels ;
 - " 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

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(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 salmon or trout, 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 ;

" freshwater fish " means any fish living in fresh water exclusive of salmon and trout and of any kinds of fish which migrate to and from tidal waters and of eels ;

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

" grating " means a device approved by the Minister for preventing the passage of salmon or trout through a conduit or channel in which it is placed ;

" 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;

" inland water " has the same meaning as in the Water Resources Act 1963 ;

" 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, subject to subsection (2) below, 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 ;

" 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.

(2) In the following provisions of this Act, namely—

Part IV;

section 28(3);

paragraph 2 of Schedule 1 ;

paragraphs 5 to 11 and Part II of Schedule 3 ; and

Schedule 2,

any reference to the Minister shall be construed, in relation to water authority areas wholly or partly in Wales, as a reference to the Minister and the Secretary of State jointly.

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- (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 Salmon and Freshwater Fisheries Act 1923 "salmon" and "trout" have the meanings assigned to them by subsection (1) above.

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 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 of this provision anything which under section 93(2) of the 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 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 Salmon Fishery Act 1865.
- (6) Section 254(2)(c) of the 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.
- (7) The 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 Interpretation Act 1889 (which relates to the effect of repeals).

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.
- (3) The following provisions of this Act, namely—
 - section 28(1) and (2) above,
 - section 39(1) and (4) above,
 - section 42(1) above, so far as it relates to the repeal of section 15 of the Salmon and Freshwater Fisheries Act 1972 and section 18 of the Water Act 1973,
 - paragraph 3 of Schedule 4 below,extend to Scotland.
- (4) This Act shall come into force on 1st August 1975.