

## SCHEDULES

## SCHEDULE 4

Section 37.

## OFFENCES

## PART I

## PROSECUTION AND PUNISHMENT

- 1 (1) Column 2 of the Table below gives a description of the offences against the provisions of this Act specified in column 1 of the Table, and in relation to any such offence—
- (a) column 3 shows whether the offence is punishable summarily (that is to say, on summary conviction) or on indictment or either in one way or the other ; and
  - (b) column 4 shows the maximum punishment by way of fine or imprisonment which may be imposed on a person convicted of the offence in the way specified in column 3 (that is to say, summarily or on indictment), any reference in column 4 to a period of years or months being construed as a reference to a term of imprisonment for that period.
- (2) A person guilty of an offence against any provision of this Act not specified in the Table shall be liable on summary conviction to a fine not exceeding £50 or, in the case of a second or subsequent conviction, £100.

TABLE

Provision of Act creating the offence	Description of offence	Mode of prosecution	Punishment
(1)	(2)	(3)	(4)
Section 1	Fishing with certain instruments for salmon, trout or freshwater fish and possessing certain instruments for fishing for such fish.	(a) If not acting with another, summarily.  (b) If acting with another— (i) summarily  (ii) on indictment	£50; or in the case of a second or subsequent conviction £100.  £100; or in the case of a second or subsequent conviction £200.  Two years or a fine or both.

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*Status: This is the original version (as it was originally enacted).*

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Provision of Act creating the offence	Description of offence	Mode of prosecution	Punishment
(1)	(2)	(3)	(4)
Section 4	Discharging poisonous or injurious matter into waters containing fish or spawn.	(a) Summarily  (b) On indictment	£400 and £40 for each day on which the offence continues after a conviction thereof.  Two years or a fine or both.
Section 5(1).	Using explosives, poisons, noxious substances or electrical devices to take or destroy fish.	(a) Summarily  (b) On indictment.	£200; or in the case of a second or subsequent conviction £400.  Two years or a fine or both.
Section 5(3)	Destroying or damaging dams etc., to take or destroy fish.	(a) Summarily  (b) On indictment	£200; or in the case of a second or subsequent conviction £400.  Two years or a fine or both.
Section 19(2)	Fishing for salmon during the annual close season or weekly close time.	Summarily	£100; or in the case of a second or subsequent conviction £200.
Section 19(4)	Fishing for trout during the annual close season or weekly close time.	Summarily	£100; or in the case of a second or subsequent conviction £200.
Section 19(6)	Fishing for freshwater fish during the annual close season for freshwater fish and fishing for eels by means of a rod and line during that season.	Summarily	£100; or in the case of a second or subsequent conviction £200.
Section 19(7)	Fishing for rainbow trout during the annual close season for rainbow trout and fishing for eels by means of a rod and	Summarily	£100; or in the case of a second or subsequent conviction £200.

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Provision of Act creating the offence	Description of offence	Mode of prosecution	Punishment
(1)	(2)	(3)	(4)
Section 21	line during that season. Prohibition on use of certain devices at certain times.	Summarily	£100; or in the case of a second or subsequent conviction £200.
Section 27	Fishing for fish otherwise than under the authority of a licence and possessing an unlicensed instrument with intent to use it for fishing.	(a) If not acting with another, summarily.  (b) If acting with another— (i) summarily  (ii) on indictment	£50; or in the case of a second or subsequent conviction £100.  £100; or in the case of a second or subsequent conviction £200.  Two years or a fine or both.

- (3) A person shall be treated as acting together with another for the purposes of the above Table if both are engaged in committing an offence against section 1 or 27 above, other than one committed by means of a rod and line or without any instrument, or one is aiding, abetting, counselling or procuring the commission of such an offence by the other.

## PART II

### PROCEDURE

- 2 Any offence against this Act committed on the sea-coast or at sea beyond the ordinary jurisdiction of a court of summary jurisdiction shall be deemed to have been committed in any place abutting on that sea-coast or adjoining that sea, and may be tried and punished accordingly.
- 3 Offences against this Act committed in Scotland shall be proceeded against and punished in Scotland.
- 4 A justice of the peace shall not be disqualified from hearing any case under this Act by reason only of being a subscriber to any society for the protection of fish, but a justice shall not be entitled to hear any case in respect of an offence committed on his own land or in relation to any fishery of which he is owner or occupier.
- 5 The court by which a person is convicted of an offence against this Act may order the forfeiture of—
  - (a) any fish illegally taken by him or in his possession at the time of the offence ;

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- (b) any instrument, bait or other thing used in the commission of the offence;
- (c) in the case of an offence of unlawful possession of any substance or device in contravention of section 5 above, that substance or device ; and
- (d) on conviction on indictment, any vessel or vehicle used in or in connection with the commission of the offence or in which any substance or device unlawfully in his possession was contained at the time of the offence ;

and may order any object so forfeited to be disposed of as the court thinks fit.

6 Schedule 7 to the Customs and Excise Act 1952 (provisions relating to the forfeiture of things seized under that Act) shall apply in relation to any vessel or vehicle liable to forfeiture under paragraph 5 above as it applies in relation to anything liable to forfeiture under that Act, but in its application in relation to any such vessel or vehicle shall have effect subject to the following modifications:—

- (a) provisos (a) to (c) in paragraph 1 and paragraph 5 shall be omitted;
- (b) for references to the Commissioners of Customs and Excise there shall be substituted references to the water authority within whose area the offence in question was committed; and
- (c) the court shall not condemn a vehicle or vessel as forfeited under paragraph 6 of that Schedule if satisfied by its owner that that offence was committed without his knowledge and that he could not have reasonably foreseen that it would be used as mentioned in paragraph 5(d) above ;

and where notice of claim in respect of anything is duly given in accordance with paragraphs 3 and 4 of that Schedule, as applied by this paragraph, the court shall not exercise its power of ordering forfeiture of the vessel or vehicle under paragraph 5 above.

In this paragraph " owner", in relation to a vessel or vehicle which is the subject of a hire-purchase agreement, means the person in possession of the vehicle under that agreement.

7 An authorised officer may seize any salmon, trout or freshwater fish bought, sold or exposed for sale by, or in the possession for sale of, any person in contravention of this Act.

8 Where any fish or any other thing of a perishable nature is seized as liable to forfeiture under paragraph 5 above, the person by whom it is seized may sell it, and the net proceeds of sale shall be liable to forfeiture in the same manner as the fish or other thing sold, and if and so far as not forfeited shall be paid on demand to the owner; but no person shall be subject to any liability on account of his neglect or failure to exercise the powers conferred on him by this paragraph.

9 If a person is convicted of an offence against this Act and is subsequently convicted of any such offence, the court may order that any fishing or general licence held by him shall be forfeited, and that he shall be disqualified from holding and obtaining a fishing or general licence or for fishing in a water authority area by virtue of a fishing or general licence for such period not exceeding one year as the court thinks fit.

10 A person who is prosecuted for an offence against this Act and who is the holder of a fishing or general licence shall either—

- (a) cause it to be delivered to the clerk of the court not later than the day before the date appointed for the hearing, or

- (b) post it, at such a time that in the ordinary course of post it would be delivered not later than that day, in a letter duly addressed to the clerk and either registered or sent by the recorded delivery service, or
- (c) have it with him at the hearing ;

and if he is convicted of the offence and the court makes an order under paragraph 9 above the court shall order the licence to be surrendered to it ;~~ç~~ and if the offender has not posted the licence or caused it to be delivered as aforesaid and does not surrender it as required then he shall be guilty of an offence and the licence shall be revoked from the time when its surrender was ordered.

11 Where a court orders a fishing or general licence to be surrendered to it under paragraph 10 above, or where by an order of a court under paragraph 9 above a person is disqualified from holding or obtaining a licence, the court shall—

- (a) send notice of the order to the water authority within whose area the offence was committed, unless the authority prosecuted in the case ;
- (b) if the licence has been so surrendered, retain it and forward it to that authority, who may dispose of it as they think fit

12 Where any person is convicted of an offence against this Act, the clerk of the court before whom he is convicted shall, within one month of the date of conviction, forward a certificate of the conviction to the water authority for the area in which the offence was committed.

13 A certificate under paragraph 12 above shall be receivable in evidence in all legal proceedings.