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SCHEDULES

SCHEDULE 15

MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO FISHERIES

The Salmon and Freshwater Fisheries Act 1975

- 7 In section 5 of the ^{M1}Salmon and Freshwater Fisheries Act 1975 (prohibition of use of explosives, poisons, electrical devices etc) in subsection (2), the words following paragraph (b) (which require Ministerial approval for the giving of permission to use noxious substances) shall be omitted.

Marginal Citations

M1 1975 c. 51.

- 8 In section 6(3) of that Act (definition of “unauthorised fixed engine”) in paragraph (d) for the words “the National Rivers Authority” there shall be substituted the words “ the Agency ”.
- 9 In section 8(2) of that Act (fishing mill dams to have attached to them fish passes of form and dimensions approved by the Minister) for the words “the Minister” there shall be inserted the words “ the Agency ”.
- 10 In section 9(1) of that Act (owner or occupier of certain dams or other obstructions to make fish passes of form and dimensions approved by the Minister) for the words “the Minister” there shall be substituted the words “ the Agency ”.
- 11 (1) In section 10 of that Act, in subsection (1) (power of the National Rivers Authority, with the written consent of the Minister, to construct and maintain fish passes of form and dimensions approved by the Minister)—
(a) the words “with the written consent of the Minister,” shall be omitted; and
(b) for the words “as the Minister may approve” there shall be substituted the words “ as it may determine ”.
- (2) In subsection (2) of that section (power of the National Rivers Authority, with the consent of the Minister, to alter etc fish passes and free gaps) the words “with the written consent of the Minister,” shall be omitted.
- 12 (1) In section 11 of that Act (Minister’s consents and approvals for fish passes) for subsection (1) there shall be substituted—
“(1) Any approval given by the Agency to or in relation to a fish pass may, if in giving it the Agency indicates that fact, be provisional until the Agency notifies the applicant for approval that the pass is functioning to its satisfaction.
(1A) The applicant for any such approval—

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- (a) shall be liable to meet any costs incurred (whether by him or by the Agency or any other person) for the purposes of, or otherwise in connection with, the performance of the Agency’s function of determining for the purposes of subsection (1) above whether or not the fish pass in question is functioning to its satisfaction; and
 - (b) shall provide the Agency with such information or assistance as it may require for the purpose of performing that function.”
- (2) In subsection (2) of that section (Minister’s power to revoke approval or consent while still provisional)—
- (a) for the words “or consent is provisional, the Minister” there shall be substituted the words “ is provisional, the Agency ”; and
 - (b) for the words from “his intention” onwards there shall be substituted the words “ its intention to do so, revoke the approval ”.
- (3) In subsection (3) of that section (Minister’s power, when revoking provisional approval, to extend period for making fish pass)—
- (a) for the words “the Minister” there shall be substituted the words “ the Agency ”; and
 - (b) for the word “he” there shall be substituted the word “ it ”.
- (4) In subsection (4) of that section (Minister’s power to approve and certify fish pass if he is of the opinion that it is efficient)—
- (a) for the words “The Minister” there shall be substituted the words “ The Agency ”; and
 - (b) for the word “he” there shall be substituted the word “ it ”.
- (5) In subsection (5) of that section (fish passes approved by the Minister deemed to be in conformity with the Act) for the words “the Minister” there shall be substituted the words “ the Agency ”.
- 13 For section 14 of that Act (gratings) there shall be substituted—

“14 Screens.

- (1) This section applies in any case where—
- (a) by means of any conduit or artificial channel, water is diverted from waters frequented by salmon or migratory trout; and
 - (b) any of the water so diverted is used for the purposes of a water or canal undertaking or for the purposes of any mill or fish farm;
- and in this section “the responsible person” means the owner of the water or canal undertaking or (as the case may be) the occupier of the mill or the owner or occupier of the fish farm.
- (2) Where this section applies, the responsible person shall, unless an exemption from the obligation is granted by the Agency, ensure (at his own cost) that there is placed and maintained at the entrance of, or within, the conduit or channel a screen which—
- (a) subject to subsection (4) below, prevents the descent of the salmon or migratory trout; and
 - (b) in a case where any of the water diverted is used for the purposes of a fish farm, prevents the egress of farmed fish from the fish farm by way of the conduit or channel.

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- (3) Where this section applies, the responsible person shall also, unless an exemption from the obligation is granted by the Agency, ensure (at his own cost) that there is placed and maintained across any outfall of the conduit or channel a screen which—
 - (a) prevents salmon or migratory trout from entering the outfall; and
 - (b) in a case where any of the water diverted is used for the purposes of a fish farm, prevents the egress of farmed fish from the fish farm by way of the outfall.
- (4) Where a screen is placed within any conduit or channel pursuant to subsection (2) above, the responsible person shall ensure that a continuous by-wash is provided immediately upstream of the screen, by means of which salmon or migratory trout may return by as direct a route as practicable to the waters from which they entered the conduit or channel (and accordingly nothing in subsection (2) or (3) above applies in relation to a by-wash provided for the purposes of this subsection).
- (5) Any screen placed, or by-wash provided, in pursuance of this section shall be so constructed and located as to ensure, so far as reasonably practicable, that salmon or migratory trout are not injured or damaged by it.
- (6) No such screen shall be so placed as to interfere with the passage of boats on any navigable canal.
- (7) Any exemption under subsection (2) or (3) above may be granted subject to conditions.
- (8) If any person who is required to do so by this section fails to ensure that a screen is placed or maintained, or that a by-wash is provided, in accordance with the provisions of this section, he shall be guilty of an offence.
- (9) In any proceedings for an offence under subsection (8) above, it shall, subject to subsection (10) below, be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or a person under his control.
- (10) If in any case the defence provided by subsection (9) above involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless—
 - (a) at least seven clear days before the hearing, and
 - (b) where he has previously appeared before a court in connection with the alleged offence, within one month of his first such appearance, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.
- (11) Any reference in subsection (10) above to appearing before a court includes a reference to being brought before a court.
- (12) The obligations imposed by subsections (2) to (6) above, except so far as relating to farmed fish, shall not be in force during such period (if any) in each year as may be prescribed by byelaw.

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- (13) The obligations imposed by subsections (2) to (6) above on the occupier of a mill shall apply only where the conduit or channel was constructed on or after 18th July 1923.
- (14) Any reference in this section to ensuring that a screen is placed and maintained includes, in a case where the screen takes the form of apparatus the operation of which prevents the passage of fish of the descriptions in question, a reference to ensuring that the apparatus is kept in continuous operation.
- (15) In this section “by-wash” means a passage through which water flows.”
- 14 (1) In section 15 of that Act (power of National Rivers Authority, with the consent of the Minister, to use gratings etc. to limit movements of salmon and trout) for the word “grating” or “gratings”, wherever occurring (including in the side-note), there shall be substituted respectively the word “ screen ” or “ screens ”.
- (2) In subsection (1) of that section (placing of gratings, deepening of channels etc.) the words “with the written consent of the Minister” shall be omitted.
- (3) In subsection (3) of that section (use of such means as the Minister may approve for preventing ingress)—
- (a) the words “with the written consent of the Minister” shall be omitted; and
- (b) for the words “as the Minister may approve” there shall be substituted the words “ as in its opinion are necessary ”.
- (4) At the end of that section there shall be added—
- “(5) In this section “open”, in relation to a screen which consists of apparatus, includes the doing of anything which interrupts, or otherwise interferes with, the operation of the apparatus.”

Commencement Information

- II** Sch. 15 para. 14 wholly in force at 1.1.1999; Sch. 15 para. 14 not in force at Royal Assent see s. 125(3); Sch. 15 para. 14(2)(3) in force at 1.4.1996 by S.I. 1996/186, art. 3 Sch. 15 para. 14(1)(4) in force at 1.1.1999 by S.I. 1995/1983, art. 4

- 15 In section 17 of that Act (restrictions on taking salmon or trout above or below an obstruction etc) in subsection (3) (section not to be enforced, in cases where the fish pass is approved by the Minister, until compensation has been paid) for the words “approved by the Minister” there shall be substituted—
- “(a) approved by the Agency, or
- (b) constructed and maintained by the Agency in accordance with section 10(1) above.”.
- 16 In section 18 of that Act (provisions supplementary to Part II) for subsection (2) (notice of application for Ministerial consent to the doing of certain acts to be given to the owner and occupier of the dam etc in question) there shall be substituted—
- “(2) The Agency shall not—
- (a) construct, abolish or alter any fish pass, or abolish or alter any free gap, in pursuance of section 10 above, or
- (b) do any work under section 15 above,

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unless reasonable notice of its intention to do so (specifying the section in question) has been served on the owner and occupier of the dam, fish pass or free gap, watercourse, mill race, cut, leat, conduit or other channel, with a plan and specification of the proposed work; and the Agency shall take into consideration any objections by the owner or occupier, before doing the proposed work.”

17 In section 30 of that Act, the paragraph defining “fish farm” (which is superseded by amendments made by this Schedule) shall be omitted.

18 (1) In section 35 of that Act (power to require production of fishing licences) in subsection (3), for the words “the National Rivers Authority” there shall be substituted the words “the Agency”.

(2) For subsection (4) of that section (definition of “the appropriate office of the National Rivers Authority”) there shall be substituted—

“(4) In subsection (3) above, “the appropriate office of the Agency” means—

- (a) in a case where the person requiring the production of the licence or other authority specifies a particular office of the Agency for its production, that office; and
- (b) in any other case, any office of the Agency;

and for the purposes of that subsection where a licence or other authority which any person has been required to produce is sent by post to an office of the Agency that licence or other authority shall be treated as produced by that person at that office.”

19 After subsection (1A) of section 39 of that Act (application of Act to River Esk in Scotland) there shall be inserted—

“(1B) Sections 31 to 34 and 36(2) of this Act shall, subject to the modifications set out in subsection (1C) below, apply throughout the catchment area of the River Esk in Scotland but a water bailiff shall exercise his powers under those sections as so applied only in relation to an offence—

- (a) against this Act;
- (b) against section 1 of the ^{M2}Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951; or
- (c) which is deemed to be an offence under this Act by virtue of section 211(6) of the ^{M3}Water Resources Act 1991,

which he has reasonable cause to suspect has been committed in a place to which this Act applies by virtue of subsection (1)(b) above.

(1C) The modifications referred to in subsection (1B) above are—

- (a) references in sections 31 to 34 of this Act to “this Act” shall be construed as including references to section 1 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (as applied to the River Esk by section 21 of that Act); and
- (b) in section 33—
 - (i) references to a justice of the peace shall be construed as including references to a sheriff; and
 - (ii) in subsection (2), the reference to an information on oath shall be construed as including a reference to evidence on oath.”.

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Marginal Citations

M2 1951 c. 26.

M3 1991 c. 57.

20 In section 41(1) of that Act (general definitions) the following definitions shall be inserted at the appropriate places, that is to say—

““fish farm” has the same meaning as in the ^{M4}Diseases of Fish Act 1937;” and

“(b) “screen” means a grating or other device which, or any apparatus the operation of which, prevents—

(a) the passage of salmon or migratory trout, and

(b) if the screen is required in connection with a fish farm, the passage of any fish farmed at that fish farm,

or any combination of devices or apparatus which, taken together, achieve that result;” and the definition of “grating” shall be omitted.

Marginal Citations

M4 1937 c. 33.

21 In subsection (3) of section 43 of that Act (extent of Act to Scotland), after the words “(1A)” there shall be inserted the words “, (1B), (1C)”.

22 In paragraph 1 of Schedule 1 to that Act (close seasons and close times) for the words “the National Rivers Authority” there shall be substituted the words “ the Agency ”.

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