
STATUTORY INSTRUMENTS

1994 No. 2524 (S.119)

RIVER, SCOTLAND

The Salmon (Fish Passes and Screens) (Scotland) Regulations 1994

<i>Made</i> - - - -	<i>23rd September</i> <i>1994</i>
<i>Laid before Parliament</i>	<i>6th October 1994</i>
<i>Coming into force</i>	
<i>For the purposes of regulation 1(2)(a)</i>	<i>1st January 1998</i>
<i>For the purposes of regulation 1(2)(b)</i>	<i>1st January 2000</i>
<i>For all other purposes</i>	<i>1st January 1995</i>

The Secretary of State, in exercise of the powers conferred upon him by section 3(2)(c) and (f), (4) and (5) and section 10(2) of the Salmon Act 1986⁽¹⁾ and of all other powers enabling him in that behalf, and after having consulted such persons as he considers appropriate, hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Salmon (Fish Passes and Screens) (Scotland) Regulations 1994 and shall, subject to paragraph (2) below, come into force on 1st January 1995.

(2) These Regulations insofar as they apply—

(a) to an off-take the construction of which commenced before 1st January 1995, shall come into force on 1st January 1998, and

(b) to a dam the construction of which commenced before 1st January 1995, shall come into force on 1st January 2000.

(3) Subject to paragraph (4) below, these Regulations shall apply to dams in and off-takes from inland waters which ordinarily contain upstream migrating salmon.

(4) Regulations 3 to 7 hereof shall not apply to any dam or off-take—

(1) 1986 c. 62.

- (a) the construction, extension or operation of which has been authorised, approved or consented to by the Secretary of State (or by any other Minister of the Crown) under the Electricity (Scotland) Act 1979⁽²⁾, or any enactment repealed by that Act, or under the Electricity (Scotland) Act 1989⁽³⁾; or
- (b) used for the abstraction of water for the purposes of providing a water supply in accordance with the approval of the Secretary of State granted in the exercise of any power requiring him to secure so far as practicable the rights of riparian owners and of other owners of land or salmon fishings.

Interpretation

2. In these Regulations—

“fish pass” means any fish pass, ladder, fish way or lift or other device which facilitates the free passage, upstream or downstream, of salmon around, over or through any dam;

“off-take” includes a lade;

“operator” in relation to a dam or off-take means its owner or, where another person is in occupation or control of it, that person.

Dams

3. Every—

- (a) dam the construction of which commenced on or after 1st January 1995,
- (b) mill dam constructed after 28th July 1865, and
- (c) portion, of any other mill dam, renewed or repaired at any time after 28th July 1865,

shall be made and maintained watertight by the operator so that no water, which can reasonably be prevented, shall run through it except when necessary to maintain the stability of the dam.

Fish passes

4.—(1) The operator of every dam shall ensure that it is provided with a fish pass which facilitates the free passage of salmon at all times except during any period when, for natural reasons, the flow of the river at the point where the dam is located is so low that salmon would not reasonably be expected to seek passage.

(2) In this regulation “natural reasons” means any reason which is not related to—

- (a) the operation of the dam, or
- (b) the abstraction of water from the river by the operator of the dam or for a purpose for which the dam was constructed or is being used.

Lades

5.—(1) The operator of every lade shall ensure that it is provided with a sluice to control the flow of water.

(2) The operator shall ensure that the lade and sluice are so constructed as to secure that the quantity of water passing into the lade shall not exceed that which is required for the purpose for which abstraction is made except when it is necessary to do so to prevent damage during high water flow.

(2) 1979 c. 11; the Act was repealed by the Electricity (Scotland) Act 1989 (c. 29), Schedule 18.

(3) 1989 c. 29.

Screens

6.—(1) Subject to paragraph (6) below, the operator of every off-take shall ensure that a screen, which prevents salmon smolts from passing through it, is provided at its entrance or within it.

(2) Where the screen is situated within the off-take, the operator shall ensure that a continuous by-wash is provided immediately upstream of the screen, by means of which salmon smolts may return by as direct a route as practicable to the river from which they came.

(3) Where an off-take returns water to inland waters the operator shall ensure that a screen is provided at the downstream outlet which prevents adult salmon from entering the outlet of the off-take.

(4) A screen may be constructed in the form of a heck or grating or in the form of any device which prevents the passage through it of adult salmon or salmon smolts (as the case may be).

(5) Any screen and any by-wash provided in accordance with this regulation shall be so constructed and located as to ensure, so far as reasonably practicable, that salmon are not injured or damaged by it.

(6) This regulation shall not apply to—

- (a) any off-take which conveys or channels water to ponds or pools and returns it directly to the river from which it was abstracted, provided that the passage of salmon through the off-take until return to the river is, at all times, unobstructed and the water is not subject to any process, contamination or disturbance which might cause injury or damage to the salmon, or
- (b) overflow outlets or spillways used to discharge excess water from reservoirs.

Installation, maintenance etc.

7.—(1) The operator of a dam or off-take shall carry out any work necessary to comply with these Regulations in such manner as to ensure the minimum practicable interruption to the passage of salmon.

(2) The operator of a dam or off-take shall carry out any maintenance of it or of any fish pass, sluice, by-wash or screen in such manner as to ensure the minimum practicable interruption to the passage of salmon.

Revocation and saving

8.—(1) Subject to paragraph (2) below, the regulations with respect to the construction and use of mill dams or lades, or water wheels made by the Commissioners, by byelaw dated 29th April and 19th July, 1865, under section 6(6) of the Salmon Fisheries (Scotland) Act 1862(4) are hereby revoked.

(2) The said byelaw shall—

- (a) in relation to lades to which it applies and whose construction commenced before 1st January 1995, continue to have effect until 1st January 1998; and
- (b) in relation to dams to which it applies and whose construction commenced before 1st January 1995, continue to have effect until 1st January 2000.

(4) 1862 c. 97 (25 and 26 Vict.). The byelaw was subsequently enacted as Schedule G to the Salmon Fisheries (Scotland) Act 1868 (1868 c. 123 (31 & 32 Vict.)) by section 10 of that Act. Schedule G was amended by the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (c. 26) Schedule 1 and by the Electricity (Scotland) Act 1979 (c. 11) Schedule 11 and revoked by section 41 of and Schedule 5 to the Salmon Act 1986 (c. 62). The 1862 Act was revoked by section 41 of, and Schedule 5 to, the said 1986 Act. The byelaw was retained in effect by sections 3(1) and 10(1) of the said 1986 Act.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

St Andrew's House,
Edinburgh
23rd September 1994

Hector Monro
Parliamentary Under Secretary of State, Scottish
Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the construction and alteration of certain dams and lades, and the construction, alteration and use of screens and associated structures in off-takes.

The Regulations apply to dams in and off-takes from inland waters which ordinarily contain upstream migrating salmon (regulation 1(3)) but do not apply to certain dams or off-takes constructed, extended or operated for the supply or generation of electricity (regulation 1(4)(a)) or the provision of a water supply (regulation 1(4)(b)).

The Regulations come into force—

- (a) on 1st January 1995 for all dams or off-takes the construction of which commenced on or after that date (regulation 1(1));
- (b) on 1st January 1998 for all off-takes the construction of which commenced before 1st January 1995 (regulation 1(2)(a)); and
- (c) on 1st January 2000 for all dams the construction of which commenced before 1st January 1995 (regulation 1(2)(b)).

All dams the construction of which commenced on or after 1st January 1995, all mill dams constructed after 28th July 1865 and any portion of an earlier constructed mill dam which has been renewed or repaired after that date, require to be maintained watertight (regulation 3).

All dams which obstruct the passage of salmon require to be provided with a fish pass (regulation 4). “Fish pass” is defined in regulation 2.

A sluice requires to be provided in every lade (regulation 5).

A screen which prevents salmon smolts from passing through it requires to be fitted in every off-take (regulation 6) except off-takes which return water unobstructed to the same river or which are overflow outlets or spillways used to discharge excess water from reservoirs (regulation 6(6)).

Construction and installation required by these Regulations and any maintenance, must be carried out so as to ensure the minimum practicable interruption to the passage of salmon (regulation 7).

The existing byelaw relating to the construction and use of mill dams or lades, or water wheels (formerly enacted by section 10 of the Salmon Fisheries (Scotland) Act 1868 as Schedule G to that Act) is revoked (regulation 8) subject to its being retained in force—

- (a) until 1st January 1998 in relation to mill lades the construction of which commenced before 1st January 1995, and
- (b) until 1st January 2000 in relation to mill dams the construction of which commenced before 1st January 1995.

Breaches of these Regulations will be dealt with as offences under section 15 of the Salmon Fisheries (Scotland) Act 1868 punishable on summary conviction in accordance with section 6 of, and Schedule 2 to, the Freshwater and Salmon Fisheries (Scotland) Act 1976 (c. 22) by a fine not exceeding level 4 on the standard scale.

The Compliance Cost Assessment relating to these Regulations is available in the library of each House of Parliament. A copy of it can be obtained from the Scottish Office Agriculture and Fisheries Department, Division K2, Room 408A, Pentland House, 47 Robb’s Loan, Edinburgh EH14 1TW.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.