

Powers of Water Bailiffs

ROBERT WILLIAMSON



SCOTTISH EXECUTIVE

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Scottish Executive
2004

The POWERS OF
WATER BAILIFFS
& WARDENS
*to enforce the Salmon and
Freshwater Fisheries Acts*

THIRD
EDITION

by
Robert Williamson



SCOTTISH EXECUTIVE
*Environment & Rural
Affairs Department*

EDINBURGH • 2004

First published 1985
Revised 1988
Second edition 1995
Third edition 2004

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The Scottish Executive
Environment & Rural Affairs Department
Pentland House
47 Robb's Loan
Edinburgh EH14 1TY

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ISBN: 0-7559-4133 0

Scottish Executive
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Executive by Astron B34328 11 / 04

Published by the Scottish Executive, November, 2004

Further copies are available from
Blackwell's Bookshop
53 South Bridge
Edinburgh
EH1 1YS

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Preface

The previous edition of this booklet will become obsolete when the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 comes into force. That Act consolidates several previous Acts and also, on the recommendation of the Scottish Law Commission, includes some amendments to the legislation.

This new edition of the booklet takes account of all those changes and reflects the position when the 2003 Act comes into force.

Although the booklet has been re-written, there are few changes to its basic arrangement. The powers of the two classes of water bailiff are now the same so the former separate chapters 2 and 3 have been merged. Appendix A, the annotated list of offences, is in the same form as before but the notes reflect several changes in the detail of some scientific and other exemptions. Appendix B has been extended to take account of the more specific definitions of the lawful methods of fishing.

As before, I am indebted to colleagues and friends for advice on the subjects covered; but any mistakes are mine and I would be glad to hear from anyone who finds any errors or significant omission.

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December 2003

1. Introduction

This booklet describes the powers of water bailiffs and wardens appointed to enforce the salmon and freshwater fisheries legislation in Scotland. The bailiffs appointed by Scottish Ministers now have the same powers as those appointed by District Salmon Fishery Boards, so the powers of both are described together in chapter 2. The wardens appointed in relation to Protection Orders have fewer powers and these are described in chapter 3. Some other officials, appointed in relation to specific aspects of the legislation, are referred to briefly in chapter 4.

2. This booklet is not an official interpretation of the legislation and it should not be quoted or used as authority for any particular power or provision. Where necessary, the statutory provisions should be referred to directly (they are identified in side notes). Most of the provisions have been consolidated in the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 but reference is made to some other Acts also.

3. For brevity, each Act will be referred to by the year of its enactment only, eg 2003 Act or 1984 Act; and any bare reference to a section is a reference to that section of the 2003 Act unless the context indicates otherwise. The full short titles of the Acts referred to in this way are:

- Salmon and Freshwater Fisheries (Consolidation)
(Scotland) Act 2003 (asp 15)
- Inshore Fishing (Scotland) Act 1984 (c.26)
- Diseases of Fish Act 1983 (c.30)
- Import of Live Fish (Scotland) Act 1978 (c.35)
- Sea Fish (Conservation) Act 1967 (c.84)
- Diseases of Fish Act 1937 (c.33)

Any reference to 'S.I.' or 'S.S.I.' is a reference to the Statutory Instrument or Scottish Statutory Instrument whose serial reference number is quoted.

Definitions of fish

- ◀ 4 ▶ In most Scottish fisheries legislation, the meaning of the word 'salmon' includes sea trout. Similarly, in this booklet, any reference to salmon also includes sea trout unless the context clearly indicates that it does not. And the word 'trout', on its own, means brown trout only and, for example, does not include rainbow trout. Again as in the legislation, 'freshwater fish' means fish living in freshwater, including trout and eels but not salmon or any kind of fish which migrate between the open sea and tidal waters. The word 'fish', if unqualified, means any fish.

2003 Act,
s.69(1)

Tweed, Solway and Border Esk

- ◀ 5 ▶ Because of their position on the border with England, the River Tweed, the Border Esk and the Solway are specially provided for in the salmon and freshwater fisheries legislation.

- ◀ 6 ▶ The Tweed has long had its own Acts but, latterly, has been subject to most of the provisions in the general Scottish salmon fisheries legislation. However, as a consequence of devolution, the 2003 Act was enacted by the Scottish Parliament and its provisions could not apply to the non-Scottish parts of the Tweed. (Any legislation on salmon and freshwater fisheries that applies to the whole Tweed is made by Order-in-Council as provided for in the Scotland Act.) The 2003 Act does not apply in any part of the Tweed and this edition of the booklet is not relevant to the Tweed.

Scotland Act
1998,
S.29(2)(a)
& s.111

2003 Act,
s.71(3)

- ◀ 7 ▶ The Solway has also long had its own special legislation but the provisions that are still relevant have been consolidated in the 2003 Act which, with one exception, applies to the whole of the Scottish waters of the Solway and to all the Scottish rivers running into it apart from the Border Esk (see para 8). The exception is that section 6 of the Act (fishing for salmon without permission) does not apply in that part of the Solway Firth from Sarkfoot downstream to a line between Arbigland and Skinburness. An equivalent offence for this part of the Solway is provided in the Border Rivers Order 1999 and is enforceable by water bailiffs appointed under the 2003 Act.

2003 Act,
s.71(5)&(6)

SI 1999/1746
article 6(1)

The Border Esk upstream from the west bank of the River Sark at Sarkfoot, including all its tributaries, has been subject to the English salmon and freshwater fisheries legislation since 1865. The 2003 Act does not apply to it and water bailiffs appointed under the Scottish legislation have no powers there. The contents of this booklet are therefore not relevant to policing the Border Esk upstream from Sarkfoot. ◀ 8 ▶

2003 Act,
ss71(4)&(6)

Jury Service

Water bailiffs, whether appointed by a District Board or Scottish Ministers, may be “persons employed in any capacity by virtue of which they have the powers and privileges of police constables” and thus not be eligible for jury service. A water bailiff, if called on for jury service, should therefore draw the circumstances of his appointment to the attention of the Sheriff Clerk. ◀ 9 ▶

Law Reform
(Misc. Provs.)
(Scotland) Act
1980, Sch.1,
Pt. 1 Group B

Police & British Sea Fisheries Officers

Police officers also have wide powers to enforce the legislation and British Sea Fisheries Officers have some powers in relation to salmon fishing offences in the sea. The powers of these officers are not described in this booklet. ◀ 10 ▶

Offences

An annotated list of offences is given in Appendix A. Some are expressed in terms which relate to the lawful methods of fishing; the definitions of these methods are further explained in Appendix B. There are two unusual offences of possession of salmon in suspicious circumstances; these are described in Appendix C. ◀ 11 ▶

2. Water Bailiffs

◀ 12 ▶
see eg ss.54
& 55

s.56

In the 2003 Act, the various powers of water bailiffs are stated to apply in relation to any of the provisions of the Act, but there is one general disapplication: the powers do not apply to the enforcement of Protection Orders made under section 48. (Enforcement of protection orders is the responsibility of wardens – see chapter 3, page 9).

NB all the references in this chapter to the powers of bailiffs in relation to the provisions of the 2003 Act are subject to this exception.

◀ 13 ▶
2003 Act,
s.69(1)

ss.55(4)&(5)

A water bailiff is defined in the Act as any person appointed as such under the Act by a District Salmon Fishery Board or by Scottish Ministers. The production by a bailiff of his or her warrant, or any badge or device indicating the appointment, is sufficient authority for the exercise of the powers.

Extent of powers

◀ 14 ▶
2003 Act,
ss.54(1) and
55(1),(3)&(6)

A water bailiff appointed by a District Salmon Fishery Board has various statutory powers of entry, search, seizure and arrest. These extend to the whole of the district of the District Board making the appointment and to any adjoining salmon fishery district. The area of a salmon fisheries district is either the area designated as that district by a Designation Order:

s.34(2)

- made under section 34(2) of the 2003 Act, or
- made under section 1 of the Salmon Act 1986;

or, if no such designation has been made,

s.34(1)

- the catchment area of all the rivers flowing into the sea within the coastal limits of the district as defined by byelaw made under section 6 of the Salmon Fisheries (Scotland) Act 1862 and extending seaward for 5 kilometres from mean low water springs. (Such of those byelaws as were made before enactment of the Salmon Fisheries (Scotland) Act 1868 were reproduced as schedule A to that Act.)

A water bailiff appointed by Scottish Ministers has the same powers as those appointed by District Boards but the exercise of those powers extends only to such district(s) or part of a district as is specified in the instrument of appointment – unlike a district board bailiff there is no extension to any adjoining district. This is the only practical difference between the powers of the two classes of water bailiff.

◀ 15 ▶

2003 Act,
s.55(5)

Power of entry

A water bailiff may, at any hour, enter and remain on land in the vicinity of a river or the sea coast for the purpose of preventing a breach of the provisions of the 2003 Act, or for detecting persons guilty of a breach of any of those provisions. This power also applies in relation to breaches of salmon-related orders made under the 1967 and 1984 Acts but only in those districts for which there is a district board constituted. For the purpose of this provision, land includes land covered by water but does not include a dwelling house or any associated yard, garden or outhouse etc.

◀ 16 ▶

2003 Act,
s.54(1)

1967 Act,
s.18(2) &
1984 Act,
s.7(1)&(2)

s.55(7)

A water bailiff may enter land for the purpose of examining a fixed engine or obstruction, or any lade. In this context:

◀ 17 ▶

2003 Act,
s.55(1)(a)

- a fixed engine means any engine, net or trap used for taking salmon other than a sweep net used in ‘net and coble’ mode (see definition of net and coble in Appendix B, page 23);
- a lade includes any artificial channel through which water is diverted from any inland water in which salmon or trout are present; and
- land includes land covered by water but does not include a dwelling house or any associated yard, garden, outhouse, etc.

s.69(1) (in this context, an engine is any device)

s.69(1)

s.55(7)

A water bailiff may also, on the authority of a warrant from a sheriff or justice of the peace, enter any premises or vehicle, if necessary by force, for the purpose of detecting whether:

◀ 18 ▶

2003 Act,
s.52

- a breach of a provision of the 2003 Act has occurred, or
- any salmon or trout illegally taken, or any illegal nets or other engines or instruments are concealed, on the premises or in the vehicle.

◀ 19 ▶

1937 Act,
s.6(1)

Any person, including a water bailiff, suspecting an offence against the Diseases of Fish Act 1937 may, with a warrant from a justice of the peace, enter any land (including any inland or marine fish farm) to seize any fish, fish eggs, foodstuff or articles suspected of having been imported, removed or about to be removed in contravention of the act or any licence, order or notice made under it. See also the provisions described at paragraphs 41 and 42.

Power of search

◀ 20 ▶

2003 Act,
s.55(1)(b)
s.55(1)(c)

A water bailiff may:

- stop and search any boat which is used in fishing or any boat if there is reasonable cause to suspect that it contains salmon or trout; and
- search and examine nets or other instruments used in fishing, or any basket, pocket or other receptacle which there is reasonable cause to suspect of containing salmon or trout illegally taken.

The reference to ‘pocket’ does not authorise the search of a person.

◀ 21 ▶

ss.55(2)

1967 Act,
s18(2) &
1984 Act,
7(1)&(2)

If a water bailiff has reasonable grounds for suspecting that evidence of an offence against the 2003 Act, or against any salmon-related order made under the 1967 or 1984 Acts, is to be found in a vehicle on private land adjoining water, or in a stationary vehicle on a public road adjoining such land or water, the bailiff may search that vehicle.

◀ 22 ▶

2003 Act,
s.52(1)

ss.52(3)

s.52(4)

The power of entry under warrant, described at paragraph 18 above, is for the purpose of search in relation to offences under the 2003 Act or illegally taken salmon or trout, or illegal nets, engines or other instruments. A water bailiff authorised by such a warrant may also search anyone found in the premises or the vehicle, or anyone who the bailiff reasonably believes has recently left or is about to enter them. In any such search, no person shall be searched except by someone of the same sex.

◀ 23 ▶

2003 Act,
s.21(2)&(6)

A water bailiff may open any package consigned or sent by common carrier, or brought to any place to be so consigned or sent, which is suspected of containing salmon or trout.

Power to seize fish, articles, boats or vehicles

A water bailiff may seize any fish, instrument or article, boat or vehicle liable to forfeiture under section 60 of the 2003 Act. This power is also available in relation to items forfeitable on conviction of a contravention of salmon-related orders made under the 1967 or 1984 Acts.

◀ 24 ▶
2003 Act,
s.55(1)(d)

1967 Act,
s.18(2) &
1984 Act,
s.7(1)&(2)

A bailiff may also seize any illegally-taken salmon, illegal nets, engines or other instruments found in the course of a search made under warrant from a Sheriff or Justice of the Peace.

◀ 25 ▶
2003 Act,
s.52(1)

If a package sent by common carrier is found to contain salmon or trout* but is not marked as required by section 21(1) of the 2003 Act: or if there is reasonable cause to suspect that salmon or trout in a properly marked package is being dealt with contrary to law, then a water bailiff may detain the package and its contents pending proceedings for an offence against any provision of the Act. If, before the conclusion of those proceedings, any of the salmon or trout become unfit for human consumption the water bailiff may destroy them or have them destroyed.

◀ 26 ▶
*see para 23

s.21(3)&(6)

s.21(4)

Any fish seized under the provisions described in paragraphs 24 to 26 above may be sold by the person seizing it. The net proceeds of the sale should be kept safely pending the outcome of the case and they are liable to forfeiture in the same way as the fish sold. But the person seizing the fish is not required to sell it, and is not liable on account of any failure to do so.

◀ 27 ▶

s.60(3)

s.60(4)

For power to seize fish, eggs of fish, foodstuffs or articles suspected of having been dealt with in contravention of the Diseases of Fish Act 1937, see paragraphs 19 and 41.

◀ 28 ▶

Water bailiffs are exempt from the offence of removing dead salmon or trout from any waters including the sea within 1.5 kilometres from low water mark. They are also protected from committing an offence against section 20 of the 2003 Act (possessing salmon illegally taken etc) in respect of anything done in good faith for the prevention or detection of crime or the investigation or treatment of disease.

◀ 29 ▶

2003 Act,
s.8(1)

s.20(6)

Power of arrest

◀ 30 ▶
s.55(6) and
1967 Act,
s.18(2) &
1984 Act
s.7(1)&(2)

A water bailiff may, without warrant, seize and detain any person found committing an offence against any provision of the 2003 Act or any salmon-related offence under the 1967 or 1984 Acts. (But remember the general caveat at paragraph 12 above: none of the powers of a water bailiff extend to policing a Protection Order made under section 48 of the 2003 Act.)

Obstruction of a water bailiff

◀ 31 ▶
2003 Act, s.58
1967 Act
s.18(2) &
1984 Act
s.71(1)&(2)

It is an offence for any person to refuse to allow water bailiffs to exercise the powers conferred by the 2003 Act or to obstruct them in the exercise of those powers. This applies also to their powers in relation to salmon-related orders made under the 1967 and 1984 Acts.

3. Wardens

The 2003 Act provides that Scottish Ministers may make a Protection Order which prohibits fishing for freshwater fish in the waters to which the Order relates unless the fisherman has the legal right to fish there or has written permission from whoever does have that right. It is an offence to contravene such a prohibition. A water bailiff does not have power to police this provision but the Act provides that Scottish Ministers may appoint wardens to do so.

◀ 32 ▶

2003 Act, s.48

s.12(1)

s.56

s.49

The wardens are nominated by the owners or occupiers of the freshwater fishing rights in the area of the Protection Order. The wardens have no powers in relation to other prohibitions or offences. Persons appointed as water bailiffs may, like anyone else, be nominated and appointed as a warden but, in policing the provisions of a Protection Order, their powers are limited to those of a warden.

◀ 33 ▶

s.49(1)

s.56

Extent of powers

The powers of a warden may be exercised in the area covered by the Protection Order in relation to which he or she is appointed. Some of the powers apply only in the vicinity of water (see paragraph 38 below). Production by a warden of his or her letter of appointment is sufficient authority for the exercise of the powers conferred by it.

◀ 34 ▶

s.49(3)

s.50(1) (a)&(c)

s.50(4)

Power of enquiry and to seize equipment

The main powers given to a warden by the Act are;

◀ 35 ▶

- to enquire as to the legal right or written permission of any person to fish in the area if there is reasonable cause to suspect that the person has no such right or permission; and to require the person to produce written evidence of such right or permission within 14 days;
- if there is reasonable cause to suspect that a person is fishing without legal right or permission, or is

s.49(2)(a)

s.49(2)(b)

attempting or preparing to do so, the warden may seize any equipment used or calculated to be of use in the contravention of the prohibition.

◀ 36 ▶ The power to enquire can be construed as allowing a warden to ask for proof of identity to help in any subsequent identification. The warden can also stipulate that the evidence of right or written permission to fish should be produced to whoever it is reasonable that such production is made, for example the warden himself or the proprietor or occupier of the fishings.

◀ 37 ▶ Any equipment seized by the warden under section 49(2)(b) would be taken for the purpose of evidence but may also eventually be subject to forfeiture if the accused is convicted. The forfeiture provisions of section 60 of the 2003 Act do not apply, but this disapplication is without prejudice to the more general forfeiture provisions in Part II (Forfeiture of Property used in Crime) of the Proceeds of Crime (Scotland) Act 1995.

s.56

Power of entry

◀ 38 ▶ Wardens have the right to enter land in the vicinity of water for the purpose of exercising the powers outlined in paragraph 35 above or to prevent or detect persons fishing without right or permission. They may also enter land to fix copies of orders or notices. Land, in these contexts, does not include buildings on land.

s.50(1)(a)

s.50(1)(c)

s.50(1)(b)

s.50(5)

Obstruction of a warden

◀ 39 ▶ Any person who wilfully obstructs or refuses to allow a warden to exercise his or her powers or rights is guilty of an offence.

s.50(3)

4. Other authorised persons

There are some other categories of person who may be authorised by Scottish Ministers or a District Salmon Fishery Board in relation to specific functions under the salmon and freshwater fisheries legislation. These are briefly described below. ◀ 40 ▶

Diseases of Fish Act 1937

Scottish Ministers may authorise any person as an inspector for the purposes of the Diseases of Fish Act 1937 either generally or for a particular purpose. Such inspectors have a power of entry on land (including land covered by water) for inspecting inland and marine waters and they may take samples of fish, fish-food, water, vegetation etc. It is an offence to obstruct an inspector in the exercise of these duties. ◀ 41 ▶

1937 Act,
ss.6(2)&10(1)

For the purpose of performing duties under the Diseases of Fish Act 1937, a person authorised in writing by a District Salmon Fishery Board may enter land in the district provided it is not a fish farm. It is an offence to refuse to admit, or intentionally obstruct, such a person in carrying out those duties. This power may be exercised by a water bailiff if so authorised by the Board (but appointment as a bailiff is not itself sufficient authority). ◀ 42 ▶

1937 Act,
ss.6(4)&10(b)

Import of Live Fish (Scotland) Act 1978

While any Order under the Import of Live Fish (Scotland) Act 1978 is in force, any person authorised for that purpose by Scottish Ministers may at all reasonable times enter and inspect any land occupied by a person holding a licence granted under the Act and any other land on which the authorised person has reason to believe that live fish or eggs of a species named in the Order may be found. In this context land includes land covered by water but does not include a dwellinghouse. The authorised person may also seize any fish or fish eggs which he suspects have been ◀ 43 ▶

1978 Act,
s.2(1)

1978 Act,
s.2(2)

1978 Act,
s.3(4)

imported or are being dealt with contrary to the provisions of the Order or any licence issued under the Act.

Diseases of Fish Act 1983

◀ 44 ▶

1983 Act,
s.7(7)

Where an Order is made under section 7 of the Diseases of Fish Act 1983 for the purpose of obtaining information about fish farming with a view to preventing the spread of disease, any person authorised for that purpose by Scottish Ministers may inspect and take copies of any records which are required to be kept under the Order.

Fish Health Regulations 1997

◀ 45 ▶

S.I. 1997/1881,
(amended by
S.I. 2001/409
reg 15(3)-(5))

Scottish Ministers may appoint a person as a veterinary inspector for the purposes of the Fish Health Regulations 1997. Such an inspector has powers to enter land, inspect premises take samples of (or from) fish etc, and examine documents and other records.

Diseases of Fish (Control) Regulations 1994

◀ 46 ▶

S.I.
1994/1447,
regs 2(1) & 11

A person may be appointed by Scottish Ministers as an inspector for the purposes of the Diseases of Fish (Control) Regulations 1994. These inspectors have powers to inspect fish farms, take samples and examine documents and other records.

Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003

◀ 47 ▶

2003 Act,
21(6)(c)

Scottish Ministers may appoint a person for the purposes of section 21 of the 2003 Act (packages of salmon or trout to be marked). This is in addition to persons appointed as water bailiffs who also have powers to police the section (see paragraphs 23 and 26 above).

◀ 48 ▶

s.50(2) &
sched.3,
para. 3

Ministers may authorise any person to enter land for the purpose of fixing notices in connection with the making of a Protection Order under section 48 of the 2003 Act.

APPENDIX A

Annotated list of offences

This appendix provides an annotated list of the offences under the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 as at the coming-into-force of the Act. It also includes offences under the Import of Live Fish (Scotland) Act 1978 and salmon-related offences under the sea fisheries Acts as at 1st January 2004. The abbreviations used, and the definitions, are the same as in the main text – see paragraphs 3 and 4 (pp 1 & 2). The list does not include offences under the legislation on fish health and disease.

Scientific and other exemptions

Section 27 of the 2003 Act provides that there is no contravention of an enactment relating to salmon or salmon eggs when the purpose is scientific or for the protection, improvement or development of stocks of fish or for the conservation of any creature or living thing, provided that permission has been obtained from the Scottish Ministers. Under section 29 of the Act, the Ministers may also, in some other circumstances, permit otherwise illegal acts relating to fishing for or taking salmon. Both sections are in general terms and apply to all such enactments; they are therefore not included in the notes cited against each offence in the list that follows.

Section 27 also allows a District Salmon Fishery Board to permit exemption from some offences relating to salmon; and, under section 28, Scottish Ministers may permit exemption from some offences in relation to fish other than salmon. Each of these provisions relates to specified offences and, where they apply, each is noted against the relevant offence in the list. Section 30 provides for some exemptions and statutory defences in relation to fish farming and farmed fish; these too are noted against the relevant offences.

Offences by corporate bodies

Section 57 of the 2003 Act provides that if it is proved that an offence against the Act by a body corporate was committed with the consent or connivance of, or due to the neglect of, of a director, manager, secretary etc of the body, then that person, as well as the body, shall be guilty of the offence. This applies

ANNOTATED LIST OF OFFENCES

to every offence under the 2003 Act and the provision is therefore not cited in the notes marked against the individual offences.

Table and notes

Caveat This list and the notes are intended as a checklist and indication of the offences and related provisions. They are not a substitute for direct reference to the statutory provisions.

<i>Brief description of the offence</i>	<i>Provision creating the offence</i>	<i>Notes see pages 19-21</i>
Fishing by a prohibited method		
Fishing for salmon in inland waters other than by rod and line or net and coble or – in certain circumstances – cruive, haaf net or certificated fixed engine	2003 Act s.1(1)	1, 2, 4, 5, 6, 7
Fishing for salmon in the sea other than by rod and line, net and coble or bag net, fly net or other stake net	s.1(2)	2, 4, 5, 6, 7, 8, 9
Fishing for freshwater fish in inland waters other than by rod and line	s.2	3, 4, 5, 6, 7, 10, 11
Fishing contrary to ss.1, 2 or 6 of the 2003 Act by two or more persons acting together	s.7	12
Use of explosives with intent to take or destroy fish	s.5(1)(a)	3, 4, 13
Use of poisons or noxious substances with intent to take or destroy fish	s.5(1)(b)	3, 4, 13, 14
Use of an electrical device with intent to stun or destroy fish	s.5(1)(c)	2, 3, 4, 13, 14
Fishing for salmon from a boat in the sea by drift net or other gill net, trawl net, seine net (other than fishing from the shore by net and coble), troll or long-line	1967 Act s.5 & S.I. 1973/207, as varied by S.I. 1983/60	15, 16
Fishing for salmon in the sea with any gill net within half a mile of the shore	1984 Act, s.1 & S.I. 1986/59	17

ANNOTATED LIST OF OFFENCES

<i>Brief description of the offence</i>	<i>Provision creating the offence</i>	<i>Notes see pages 19-21</i>
Fishing for salmon with net of mesh size less than 90mm (stretched mesh)	2003 Act, s.31(1)(d) & (7) & S.I. 1992/1974, reg 6	6
Fishing for salmon with a net of twine less than 0.9mm thick	<i>ditto</i> reg. 8A	6, 18
Use of monofilament netting in the construction of nets used in fishing for salmon	<i>ditto</i> reg 8	6
Taking any salmon in its passage through a fish pass	2003 Act, s.10(1)	23
Fishing without permission		
Fishing for salmon without legal right or written permission	s.6(1)	4, 19
Fishing without legal right or permission in a loch or stank owned by one person	s.11	20
Fishing for freshwater fish without legal right or written permission in contravention of a prohibition in a Protection Order	ss.12 & 48(2)(b)	4, 21
Annual close time		
Fishing for salmon during the annual close time other than by rod and line	s.14(1) & (2)	6, 23
Fishing for salmon during the annual close time by rod and line except as allowed for by byelaw or regulation	s.14(1) & (2)	6, 23, 24
Failure to remove boats, nets and other fishing tackle from a salmon fishery within 36 hours of start of the annual close time	s.15	6, 23, 25
Fishing for or taking trout during the annual close time for trout	s.17(2)(a)	6, 28

for sale etc and possession during the annual close time see under Sale, purchase and possession on page 16

ANNOTATED LIST OF OFFENCES

<i>Brief description of the offence</i>	<i>Provision creating the offence</i>	<i>Notes see pages 19-21</i>
Weekly close time		
Fishing for or taking salmon on a Sunday	s.13(2)	6, 23
Fishing for or taking salmon during the weekly close time other than by rod and line	s.13(3)	6, 23, 29
Failure to comply with byelaws or regulations on the observance of the weekly close time for salmon fishing	s.31(6)&(7)	6, 30
Unseasonable salmon		
Taking, fishing for, buying, selling etc or possessing unclean or unseasonable salmon	s.18(1)	2, 6, 23, 31
Sale, purchase and possession		
Possession, sale etc of unclean or unseasonable salmon	18(1)(b)	2, 6, 23, 31
Possession, sale etc of salmon roe	19(1)	2, 23, 32, 44
Sale of rod-caught salmon	s.38 & S.S.I. 2002/418	23
Buying, selling or having in possession salmon during the period when the annual close time is in force in every salmon fishery district	s.16	6, 23, 26, 27, 43, 44
Purchase or sale of trout less than 20 cm long	s.22(1)(a)	6, 33, 43
Purchase or sale of trout between 1 Sept and 31 March	s.22(1)(b)	6, 33, 43
Possession of trout during the annual close time for trout	s.17(2)(b)	6, 28, 43
Consigning salmon or trout in an unmarked package	s.21	
[There is an enabling provision to establish a salmon dealer licensing scheme with offences (none established at 30/11/03)]	s.65	

ANNOTATED LIST OF OFFENCES

<i>Brief description of the offence</i>	<i>Provision creating the offence</i>	<i>Notes see pages 19-21</i>
Possession of salmon, trout or certain articles in circumstances where the possessor is suspected of having taken the fish or having used (or being about to use) the articles unlawfully	s.9	34
Possession of salmon believing or having reason to suspect that it had been illegally taken	s.20	34
Obstruction etc of salmon		
Preventing the passage of salmon through a fish pass	s.10(1)	23
Failure to comply with regulations on fish passes and screens at dams and intakes	s.31 & S.I. 1994/2524	23
Failure to comply with byelaws or regulations relating to cruives	s.31	23, 35
Obstructing the passage of salmon to spawning grounds during the annual close time	s.23(3)	2, 23, 36
Use of any device to obstruct the passage of young salmon	s.23(1)	2, 23, 36
Young salmon & spawning beds		
Knowingly taking, destroying or injuring, or buying, selling or possessing, young salmon	s.23(1)	2, 23, 36
Knowingly injuring or disturbing salmon spawn or spawning beds	s.23(2)	2, 23, 36
Introduction and keeping of fish		
Import, keeping or release of fish designated under the 1978 Act except in accordance with the provisions of that Act	1978 Act, s.3	37
Introduction of salmon in inland waters without the consent of the District Board	2003 Act, s.24	38
Solway Firth		
Use of an uncertificated fixed engine in the Solway Firth	s.25	5, 39

ANNOTATED LIST OF OFFENCES

<i>Brief description of the offence</i>	<i>Provision creating the offence</i>	<i>Notes see pages 19-21</i>
Fishing without legal right or permission for any fish other than salmon in the rivers running into the Solway Firth (except the Annan)	s.26	39
Obstruction of officers		
Obstruction of a constable or water bailiff in the exercise of the powers conferred on them by the 2003 Act	s.58	
Obstruction of a warden in the exercise the powers conferred by sections 49 and 50	s.50(3)(a)	
Obstruction of any person appointed by Scottish Ministers under s.50(2) in the exercise of the powers conferred by that subsection	s.50(3)(b)	
Obstruction of any person authorised under s.21(6) in the exercise of powers conferred by that section	s.21(5)	
Miscellaneous other offences		
Unauthorised removal of dead salmon or trout from the water	s.8	4, 19
Contravention of any regulation made under s.31(1)	s.31(7)	23, 40, 45
Contravention of any regulation made under s.38	s.38(7)	23, 40
Failure of a proprietor or occupier to provide such information or statistics, or to allow such access to a fishery, as may be required under s.64	s.64(2)	
Carriage of monofilament gillnet of mesh size of less than 250mm in any British fishing boat	1984 Act, s.2 & S.I. 1996/1907	41,42
Fishing with trawls or other moving gear within half a mile of a fixed salmon net	1984 Act, s.3	42
Landing of salmon caught in contravention of an order made under the 1967 Act	1967 Act s.6 & S.I. 1972/1966,as varied by S.I. 1983/58	

ANNOTATED LIST OF OFFENCES

NOTES on the table of offences

NB – see also the general introductory notes at page 13

- 1 The right to use a cruive or a haaf net depends on the right having existed before 10 May 1951; and the burden of proving the existence of such a right, or proving that a fixed engine is certificated, rests on the user. (s.1(4) & (5))
- 2 There is an exception for scientific purposes, and some other purposes, in relation to salmon with the written permission of the District Salmon Fishery Board. (s.27(1) & (2))
- 3 Exception for scientific purposes, and some other purposes, in relation to freshwater fish other than salmon with the written permission of Scottish Ministers. (s.28(1) & (2))
- 4 An attempt at, or an act preparatory to, committing the offence is itself an offence. (provision within the section)
- 5 See Appendix B (p 22) for definition of fishing methods.
- 6 Exception for fish farming operations in a fish farm; in this context the meaning of 'fish farm' is as defined in the Diseases of Fish Act 1937. (2003 Act ss.30(1) & 69(1))
- 7 It is permitted to use a gaff, tailer or landing net as an auxiliary to taking fish by rod and line. (s.3)
- 8 Applies within the area of salmon fishery districts which, depending on when made, usually extends seawards 5 kilometres or 3 miles from low water mark. (s.34 and any relevant byelaw or designation order)
- 9 The definition of bag net, fly net or other stake net allows the use of a landing net to remove fish from them. (see Appendix B)
- 10 If all the proprietors of a pond or loch are so agreed, any of them may fish by net. (s.2(3))
- 11 An owner or occupier of the fishing right may fish for freshwater fish other than trout by net or trap. (s.2(4))
- 12 This provision provides for enhanced penalties for proven 'gang' poaching.
- 13 Applies in the sea up to 22 km from baselines. (s.5(1))
- 14 Scottish Ministers may permit exceptions to the offence for fish farming operations in a fish farm; for this purpose a fish farm is as defined in the 1937 Act. (s.30(1) & (2))
- 15 Applies in the sea up to 12 nautical miles from baselines. (S.I. 1973/207)
- 16 Exception for fishing operations under the authority of Scottish Ministers for scientific investigation or the transport of fish. (1967 Act, s.9)

ANNOTATED LIST OF OFFENCES

- 17 This offence is overlapped by the more recent provision on lawful methods in section 1 of the 2003 Act.
- 18 Does not apply to a poke net. (S.I. 1974/201, reg. 8A(4)) (Some poke nets are certificated for use at specific sites in the Solway.)
- 19 Applies in inland waters and the sea up to 1.5 kilometres seaward from mean low water springs.
- 20 [This offence is derived from the fish part of the Theft Act 1607 (c.6).]
- 21 The offence applies in the inland waters of the area of a Protection Order but, for this provision, the meaning of 'inland waters' excludes the tidal parts of rivers. (s.48(12))
- 22 The close time is set by byelaw or regulation and varies between districts. (A list of current dates is available from the Scottish Executive, Environment and Rural Affairs Department.)
- 23 A person who commits this offence can be convicted on the evidence of one witness. (provision within the section)
- 24 The extensions of time for fishing by rod and line are set by byelaw or regulation. (A list of the current dates is available from the Scottish Executive, Environment and Rural Affairs Department.)
- 25 Does not apply to any ferry boat or, in some circumstances, to a boat used by the owner, or family of owner, of the land; and does not apply to the pins of fly nets or other stake nets, fastenings in rock for bag nets or the pins and poles of certificated fixed engines (s.15(5)). And there is a defence in relation to boats necessary for the operation of a fish farm (s.30(4)); the burden of proof in relation to this defence is governed by the terms of section 61.
- 26 For the purpose of this offence, the Scottish fishery districts include the district of the River Tweed. (s.16(1))
- 27 There is a statutory defence if the accused can prove that the fish was caught lawfully. (s.16(2))
- 28 It is provided that it shall not be an offence if the fish are taken for scientific or breeding purposes or for transferring alive to other waters. (s.17(3))
- 29 The weekly close time is 6pm on Friday to 6am on Monday but may be modified by regulation. (ss.13(1) and 31(5))
- 30 The current (30/11/03) provisions are byelaws which were made under section 6 of the Salmon Fisheries (Scotland) Act 1862 and reproduced as schedule D of the Salmon Fisheries (Scotland) Act 1868. By reason of the law on the interpretation of statutes, these byelaws are treated as being included in the reference to regulations made under section 31(1) of the 2003 Act.
- 31 This offence is independent of the close-time offence. Unclean salmon are those that have spawned and not yet recovered from spawning; unseasonable salmon are gravid fish on the eve of spawning. (*Brady v Barbour*, High court 13/1/95 – 1995 SLT 920 & 1995 SCCR 258)

ANNOTATED LIST OF OFFENCES

- 32 There is an exemption for possession (but not buying or selling) if the possessor can satisfy the court as to the reason for the possession; and it is a defence for the possessor to prove that the roe was, or was reasonably thought by him to be, produced by a fish farm (s.19(2)&(3)). The burden of proof in relation to the statutory defence is governed by the terms of section 61.
- 33 Does not apply to live trout disposed of for the purpose of stocking waters or for artificial propagation. (s.22(2))
- 34 See extended note in Appendix C (p27).
- 35 The current (30/11/03) provisions are byelaws which were made under section 6(6) of the Salmon Fisheries (Scotland) Act 1862 and were reproduced as schedule F of the Salmon Fisheries (Scotland) Act 1868. By reason of the law on the interpretation of statutes, these byelaws are treated as being included in the reference to regulations made under section 31(1) of the 2003 Act.
- 36 There is an exception for the purpose of cleaning or repairing any dam or mill lade or work done in the exercise of rights of property in the bed of a river. (s.23(4))
- 37 A list of the species covered by an order under this provision can be obtained from the Scottish Executive, Environment and Rural Affairs Department.
- 38 Does not apply in districts where there is no district board nor in fish farms. (s.24(2)(b))
- 39 For the purpose of this provision, the Solway Firth extends seawards to a line drawn between the Mull of Galloway and Hodbarrow Point in Cumbria. (s.69(1))
- 40 Under the law on the interpretation of statutes, any reference to regulations made under s.31 or 38 includes instruments made under the direct predecessors of the section referred to.
- 41 This provision is to assist in the control of illegal salmon fishing but salmon are not mentioned in the regulations; it applies to all British fishing boats within the 6-mile limit.
- 42 Enforcement is by British Sea Fisheries Officers, not by water bailiffs.
- 43 It is a defence for the possessor to show that that he or she reasonably believed that the fish was produced by fish farming (s.30(5)); for this purpose, 'fish farming' is defined in section 30(6).
- 44 For this section, the burden of proof in relation to the statutory defence is governed by the terms of section 61.
- 45 For regulations made under s.31(1)(a) & (d) there is an exemption in relation to fish-farming operations in a fish farm.

APPENDIX B

Definitions of fishing methods

The principal lawful methods of fishing for salmon are specified in section 1 of the 2003 Act: they are – *rod and line; net and coble; and bag net, fly net or other stake net*. Section 1 also provides for the lawful exercise of any existing rights to use a *cruipe* and, in the Solway, a *certificated fixed engine* or a *haaf net*. The sea fisheries legislation prohibits the use of a *gill net* or a *drift net* for salmon fishing. The definition of each of these methods is described below.

Rod and line

For the purpose of the 2003 Act, the meaning of “rod and line” is defined in section 4:

“ “rod and line” means single rod and line (used otherwise than as a set line or by way of pointing, or by striking or dragging for fish) with such bait or lure as is not prohibited by [section 4(2)] or, in relation to fishing for salmon, under section 33 or 38(5)(b)”.

Of the various elements in this:

- the phrase single rod and line is originally derived from the 19th century prohibition against the use of double-line and cross-line fishing: it means that the bait or lure must be connected to only one line;
- the exceptions noted in parenthesis specifically exclude some modes of fishing that were found to be unlawful before the passing of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 and were the subject of a general provision in that Act: – in this context, the words *set line* means a rod and line that is fixed in some way; *pointing* means use of a rod with a hook attached at its point; and *striking or dragging* refers to other techniques used in foul-hooking;
- the baits and lures expressly prohibited by section 4(2) are fish roe, fire and light; and
- the reference to baits or lures prohibited under section 33 or 38(5)(b) covers any regulations, made under those

DEFINITIONS OF FISHING METHODS

sections, that prohibit the use of some baits or lures for salmon fishing in particular areas at specified times.

This definition (except the final element) applies to fishing for trout and other freshwater fish as well as salmon.

Net and coble

“Net and coble” is not defined in the 2003 Act. The words have long been used to describe the lawful method of fishing for salmon by net in Scottish rivers: the details of what was or was not allowed in that method were defined by decisions of the courts over many years. However, since 1993, there has been a power to make regulations defining what “fishing for or taking salmon by net and coble” means, and such a regulation has been made. It was made under the direct precursor to section 31(4)(a) of the 2003 Act and continues to have effect as if made under that section. The regulation provides that:

“fishing for or taking salmon by net and coble means the use of a sweep net, paid out from a boat, and worked from the bank or shore or from waters adjacent to the bank or shore, whereby the salmon are surrounded by the net and drawn to the bank or shore, provided that –

(i) the net or any warps are not made or held stationary, nor allowed to drift with the current or tide, but are both paid out and hauled in as quickly as practicable and kept in unchecked motion by and under the effectual command and control of the fisherman for the purpose of enclosing the salmon within the sweep of the net and drawing them to the bank or shore;

(ii) no stakes, dykes, other obstructive devices or other nets are used in association with the net;

(iii) the water is not disturbed by throwing stones or other objects or splashing or other activity in order to drive salmon into the area to be swept by the net;

(iv) the net shall not come within 50 metres of any other such net already being paid out or hauled, until the last mentioned net has been hauled in to the bank or shore; and

(v) the net is not designed or constructed for the purpose of catching fish by enmeshing them”.

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Regulation 2(a) of the Salmon (Definition of Methods of Net Fishing and Construction of Nets) (Scotland) Regulations 1992 (S.I. 1992/1974 as amended by S.I.s 1993/257 and 1994/111)

Bag net, fly net or other stake net

“Bag net, fly net or other stake net” is not defined in the 2003 Act but, under section 34(1)(b), Scottish Ministers may make regulations defining what is meant by fishing for or taking salmon by bag net etc. A regulation defining this was made under the immediate precursor to section 34(1)(b) and it continues to have effect as if made under section 34. The regulation provides that:

“fishing for or taking salmon by bag net, fly net or other stake net means the use of a fish trap (including the use of a landing net to remove salmon from such a trap) consisting of one or more fish courts and associated inscales and wings, together with a leader net designed to lead the salmon into the trap; the whole of which is fixed or moored to the shore or sea bed; provided that –

- (i) no part of the bag net, fly net or other stake net, except mooring warps and anchors, shall extend seawards beyond 1300 metres from the mean low water mark: and
- (ii) no part of the net or trap is designed or constructed for the purpose of catching fish by enmeshing them”.

Regulation 2(b) of the Salmon (Definition of Methods of Net Fishing and Construction of Nets) (Scotland) Regulations 1992 (S.I. 1992/74 as amended by S.I.s 1993/257 and 1994/111)

Cruive

A cruive is a sort of fish trap set in a weir across a river. No grant of a right to use a cruive has been made for a long time and, though some rights exist, none has been exercised recently. “Cruive” is not defined in the 2003 Act but, under section 31(1)(b), Scottish Ministers may make regulations governing the construction and use of cruives. Cruive regulations were made in 1865 under a precursor of section 31(1); they were reproduced as schedule F to the Salmon

DEFINITIONS OF FISHING METHODS

Fisheries (Scotland) Act 1868 and continue to have effect as if made under the 2003 Act. Section 1(4) of the Act provides that a right to use a cruive may only be exercised if the right was in existence before 10th May 1951; and also that, if a question arises in any proceedings as to whether someone is entitled to use a cruive, it is for that person to show that he or she is so entitled, or has permission from someone who is.

Certificated fixed engine

In Scotland, certificated fixed engines are unique to the Solway (which for this purpose extends as far west as the Mull of Galloway). They are defined in section 1(5) of the 2003 Act:

“ “certificated fixed engine” means a fixed engine certificated as privileged under section 5 of the Solway Salmon Fisheries Commissioners [(Scotland)] Act 1877 (c.ccxl)”.

Section 1(5) also provides that if a question arises in any proceedings as to whether a fixed engine is certificated, it is for the user to show that it is. Each certificate describes the form and dimensions of the authorised fixed engine and includes a site plan. Various stake nets, bag nets, poke nets and yairs were certificated.

Haaf net

The haaf nets are also unique to the Solway; they are partially framed bag-shaped nets which are usually held against the flow of the tide until a salmon enters, whereupon the netsman lifts the net to trap the fish in the bag of netting. The method is not defined in the 2003 Act but, under section 31(4)(c), Scottish Ministers may make regulations defining it. No regulations have been made and, unless they are, “haaf net” takes its ordinary meaning in the context of lawful salmon fishing in the Solway. Section 1(5)(b) of the Act provides that a right to use a haaf net may only be exercised at any place if the right was in existence before 10th May 1951 and also that, if a question arises in any proceedings as to whether someone is entitled to use a haaf net, it is for that person to show that he or she is so entitled, or has permission from someone who is.

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Gill net

Fishing from boats for salmon in the sea using a gill net was prohibited in 1975. The prohibiting Order defines a gill net as:

“any length of net being a net designed for the purpose of catching fish by enmeshing them”.

Salmon and Migratory Trout (Prohibition of Fishing) (No. 2) Order 1972, (S.I. 1973/207 as amended by S.I.s 1975/844 & 1983/60)

The further Order banning the use of gill nets for salmon fishing within half a mile of the shore (whether or not set from a boat) includes a more elaborate definition. It is

“any net designed or set for the purpose of catching fish by enmeshing them, whether or not the net is set on its own or attached to, or part of, other fishing equipment”...

Inshore Fishing (Salmon and Migratory Trout) (Prohibition of Gill Nets) (Scotland) Order 1986, (S.I. 1986/59)

Drift net

The use of drift nets in fishing for salmon at sea was banned in 1962. This prohibition has to some extent been superseded by the ban on the use of any enmeshing net (see under ‘Gill net’ above) but it still exists and includes a definition of “drift net”. It is:

“any length of net allowed to float or drift being either attached to or released from a fishing boat and not being a length of net attached to or held on the shore”.

Salmon and Migratory Trout (Prohibition of Fishing) (No. 2) Order 1972, (S.I. 1973/207 as amended by S.I.s 1975/844 & 1983/60)

APPENDIX C

Sections 9, 20 & 59 of the 2003 Act

Sections 9 and 20 of the 2003 Act contain two offences of which a person can be charged, and eventually convicted, on a basis of suspicion that an illegal event had occurred or was about to occur. Such offences are unusual and there are important differences between these two: each is therefore separately described below. Section 59 of the Act may have an effect when a case under either section 9 or 20 (or s.16) comes to trial, it too is described.

Section 9

Section 9 provides that if a person is found in possession of salmon or trout, or instruments or certain substances that could be used in taking salmon or trout, in circumstances which provide reasonable grounds for suspecting that the person had obtained them as a result of, or for the purpose of, committing an offence against sections 1, 2, 5, 6 or 7 of the Act, the person may be charged and convicted of unlawful possession of the articles. The section is in the same terms as its predecessor – section 7 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 – and is thus liable to the same interpretation. The operation of section 7 was described in *Aitchison v Bartlett* 1963. In the following adjusted excerpt from the judgement in that case, the references to the equivalent section numbers in the 2003 Act have been inserted for ease of current use (those substitutions are in italic):

Subsection 9(1) provides that if anyone is found in possession of any salmon [or trout or any instrument, explosive, poison or other noxious substance which could be used in the taking of salmon or trout], in circumstances which provide reasonable ground for suspecting that he has obtained the [article(s)] as a result of his committing an offence under *sections 1, 2, 5, 6 or 7 of the 2003 Act*, that person may be charged with unlawful possession of the [article(s)]. *Subsection 9(2)* entitles the court to convict that person of unlawful possession under *section 9* if it is satisfied that the person charged under *subsection 9(1)* obtained the possession as a result of his having

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committed an offence against *section 1, 2, 5, 6 or 7 of the Act*. The scheme of the section is that *subsection 9(1)* entitles the Crown to bring the charge if the circumstances show the required reasonable suspicion. *Subsection 9(2)* deals with the position when the case comes to trial. The accused then has an opportunity of establishing that these suspicious circumstances have an innocent explanation. If he does not do so and the court is satisfied upon the evidence as a whole that he was in possession as a result of or for the purpose of committing any of the said offences, he may be convicted under *section 9*." (from Lord Justice General (Clyde)'s opinion in *Aitcheson v Bartlett*, 1963 JC 27, SLT 65)

The offence is limited to the person who is suspected of committing or intending to commit the illegal-fishing offence; it does not extend to any subsequent possessor. Section 9(3) provides that it is lawful to convict a person under the section on the evidence of one witness. However, although that may be sufficient, a water bailiff should collect as much corroborative evidence as possible to support the case.

Section 20

Although it is an offence to fish for salmon without permission, the salmon itself, like other wild animals, belongs to no one until it is caught; and, once caught, belongs to the captor even if unlawfully taken. Since the unlawful taking of wild salmon is not theft, the subsequent receipt of such a fish (even knowing it to have been unlawfully taken) is not covered by the common law crime of reset. (In contrast, wild fish once caught, or salmon in a fish farm, can be truly stolen and could therefore subsequently become the subject of reset.) The precursor of section 20 was designed to fill the gap; the section provides a statutory offence of possessing salmon believing, or having reason to suspect, that the fish was illegally caught. It is roughly equivalent to reset.

The offence

Subsection 20(1) contains two alternatives:

- possession of salmon believing it to have been illegally taken, killed or landed; and
- possession of salmon in circumstances in which it would have been reasonable for the possessor to suspect that the salmon had been illegally taken, killed or landed.

SECTIONS 9, 20 & 59 OF THE 2003 ACT

In both cases it would be necessary to prove that the accused was in possession of the salmon. In addition, in the first case, the court would have to be satisfied that the accused did know or believe that the fish had been illegally taken. This alternative is to cover the situation where the accused has admitted the belief or knowledge (the simpler, but perhaps less likely, scenario).

In the second case, the court would have to be satisfied that the circumstances were such that it was reasonable that the accused should suspect that the fish had been illegally taken, killed or landed. The prosecution would not have to prove that the fish had been illegally taken, or that the accused did indeed suspect that this was so, but rather that, in all the circumstances, it was reasonable that the accused should have so suspected. The circumstances that would give rise to such a suspicion will, among other things, depend on who the possessor is; different people can be expected to have different knowledge of the signs that a fish might have been unlawfully taken. It is not sufficient that the water bailiff or policeman has good reason to suspect: the basis of the offence is circumstances that ought to have caused suspicion in the mind of the particular possessor.

Subsection 20(5) provides that the relevant illegal taking, killing or landing includes such offences whether in Scotland or in England and Wales, providing that, in this context, the offence is an offence under the law applying in the place where the salmon was taken, killed or landed. Thus, though a salmon caught by gill net in Scotland is associated with a relevant offence, one taken lawfully by gill net in England would not be, even if subsequently possessed in Scotland.

Statutory defence

Subsection 20(3) provides that it is a defence to show that the salmon had not been unlawfully taken even if the circumstances should have given rise to suspicion that it had been. Some have read this provision as meaning that, in every case, the accused has to prove that the fish was lawfully taken if he or she wishes to escape conviction. That is not so: the accused person is presumed innocent at the outset of the trial, and the prosecution must prove both that that person was in possession of the salmon and should, in all the circumstances, have suspected (or believed) it to have been illegally taken,

SECTIONS 9, 20 & 59 OF THE 2003 ACT

killed or landed. (The burden of proof in this statutory defence is governed by the terms of section 61 of the Act.)

Miscellaneous provisions

As in the case of reset (where the thief cannot be convicted of receiving the stolen goods), a person cannot be convicted of the section 20 offence in respect of conduct which constitutes an offence of illegal fishing. (s. 20(6))

There is a saving proviso to protect water bailiffs, police and others who might possess illegally taken salmon in the course of preventing or detecting crime or in the investigation or treatment of disease. (s.20(6))

A person charged with the section 20 offence may be convicted on the evidence of a single witness. (s.20(4))

Section 59

Section 59 provides that in any trial for an offence under section 9, 16, or 20, or under the law relating to reset, if the court is satisfied that the accused is not guilty of the offence charged but is guilty of another of those offences, then it may acquit the accused of the charged offence but find the person guilty of that other offence. The purpose of this unusual section is to prevent an accused, charged under section 20, from escaping conviction by accepting that he did indeed believe or suspect that the fish had been the subject of a crime (thus explaining the incriminating evidence), but claiming that he suspected that the fish had been stolen rather than illegally caught. However, this matter does not require the direct attention of a water bailiff: it would be for consideration by the prosecution authorities and the court when the case comes to a trial.

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Astron B34328 11/04

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ISBN 0-7559-4133-0



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