

Freshwater Fisheries & the law in Scotland



Background

Scotland abounds with rivers and freshwater lochs. In many areas, the principal species will usually be brown trout. Fish diversity increases significantly further south with waters supporting species such as grayling, pike, perch and roach. The law relating to brown trout and these species is the same.

There is often a great deal of confusion regarding the rights relating to fishing, particularly trout fishing, in Scotland. 'Freshwater fish' are defined as: *'any fish living in freshwater, including trout and eels and the fry of eels but exclusive of salmon and any kind of fish which migrates between the open sea and tidal waters'*. In this document the terms 'trout' and 'freshwater fish' are used interchangeably.

The general rule

Freshwater fishing rights are an incident to property rights. Therefore, if you own the banks of a river or loch you will also have a right to fish for freshwater fish on the adjoining water. There is no common right of fishing for freshwater fish available to the public.

Assuming that you have the permission of the landowner, defining boundaries of where you can fish is not always straightforward:

Rivers: Where the banks are owned by two different proprietors, each will own the river bed up to the halfway point known as the 'medium filum'. Anglers may cast over the full width of the river.

Lochs: Where there are two or more proprietors of a loch, each has a right of navigation over the loch which includes the right to fish. Thus permission from one proprietor means the angler may fish over all parts of the loch. This right can only be exercised from land belonging to the proprietor or by boat launched from that land over the whole surface of the loch.

If a landowner finds someone fishing without permission, the only remedy is under the common law of trespass and he may turn the poacher off his water. If the poacher is a repeat offender, the landowner may seek a court interdict.

Exceptions

Salmon

This rule does not apply to salmon. Salmon fishing rights have historically been vested in the Crown as a heritable title (excluding Orkney and Shetland). No one may fish for salmon in rivers, estuaries or the sea within territorial limits without permission of the Crown or the party vested in the Crown rights (ie the owner of the salmon fishings). Fishing without the permission of the owner is a statutory offence.

Freshwater fishing rights must not be used in such a way as to interfere or injure the salmon rights.

Tidal waters

There is a common law public right to fish for freshwater fish in the tidal portion of a river, (the tide must ebb and flow where the public right to fish is claimed). It is settled that this right to fish extends as far up the

river as the ordinary spring tides. It should be emphasized that this public right cannot be exercised unless the public has lawful access to the fishings.

Sea trout

Sea trout enjoy the same legal protection as salmon and general references in Scots law to 'salmon' include sea trout. There is a common misconception that there is a general right to fish for sea trout in the sea or tidal areas in Scotland. This is incorrect and, as in freshwater, it is a criminal offence to fish for sea trout and salmon in any part of the sea within 1.5km of mean low water springs.

Protection orders

Waters may be designated a Protection Order (PO) under the 2003 Act and it is an offence to fish for or take fish from the prescribed area without legal right or written permission. 14 POs are in force in Scotland. Wardens are appointed under the Act who have powers to inspect permits and seize instruments or articles where there is reasonable suspicion that these have been used in contravention of the PO.

'Stanks' and enclosed ponds or lochs

Fishing without permission on a loch owned by one person, or a 'stank', is a criminal offence. A stank is a reservoir or pond with neither inlet nor outlet sufficient to allow access or egress by fish.

Border Rivers

Rivers whose catchment falls into both Scotland and England have their own Acts (Tweed, Border Esk and some Solway rivers). For example, it is a criminal offence to fish for freshwater fish without permission in any river running into the Solway (with the exception of the Annan).

Some points to note

Ownership of the fish

Freshwater fish are wild animals and do not belong to anybody until caught. In an enclosed or stocked pond or stank they are the property of the owner. A person who takes fish from such waters without permission commits theft.

Access

Under the Land Reform (Scotland) Act 2003, access rights are granted to the public to cross land. This right must be exercised 'responsibly'. The right is not exercisable over land forming part of a 'private curtilage' ie the private space around someone's house nor is it exercisable over fields of sown or growing crops. The act does not confer any right to fish, which is consistent with the fact that historically Scottish courts have held that lawful access to a private river or loch does not give the public a right to fish.

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