
DRAFT STATUTORY INSTRUMENTS

2006 No.

The Scotland Act 1998 (River Tweed) Order 2006

PART 1

ADMINISTRATION

Citation, commencement, application and extent

- 1.—(1) This Order may be cited as the Scotland Act 1998 (River Tweed) Order 2006.
- (2) This Order shall come into force on the day after the day on which it is made.
- (3) This Order applies only to the Tweed district.
- (4) Part 4 extends only to Scotland and Part 5 extends only to England and Wales.
- (5) The amendments contained in Part 1 of Schedule 4 have the same extent as the enactments amended.

Definition of the Tweed district

- 2.—(1) In this Order, “the Tweed district” means the district described in paragraphs (2) to (8).
- (2) The coastal limit of the district in the north is high water mark on the boundary between the local government areas of East Lothian and Scottish Borders (“the northern coastal limit”).
- (3) The coastal limit of the district in the south is grid reference NU 0783243378 (“the southern coastal limit”).
- (4) The district extends landward to include the catchment area of every river which flows directly or indirectly into the sea between the northern coastal limit and the southern coastal limit.
- (5) The district includes the southern seaward sector and the northern seaward sector.
- (6) The southern seaward sector is the area bounded by—
 - (a) in the west, a straight line between high water mark on the boundary between Scotland and England and the southern coastal limit;
 - (b) in the south, a straight line extending 8 kilometres seaward from the southern coastal limit, and at right angles to the line described at sub-paragraph (a);
 - (c) in the north, a straight line extending 8 kilometres seaward from high water mark on the boundary between Scotland and England, and at right angles to the line described at sub-paragraph (a); and
 - (d) in the east, a straight line joining the seaward ends of the lines described at sub-paragraphs (b) and (c) (and parallel to the line described at sub-paragraph (a)),and includes any water lying to the west of the line described in sub-paragraph (a).
- (7) The northern seaward sector is the area bounded by—
 - (a) in the south, the line described at paragraph (6)(c);

- (b) in the north, a line extending 8 kilometres seaward from the northern coastal limit, along a bearing of 026 degrees true from that point;
 - (c) in the west, the line of the coast at high water mark between the northern coastal limit and high water mark on the boundary between Scotland and England; and
 - (d) in the east, a line between the seaward ends of the lines described at sub-paragraphs (a) and (b), and parallel to the line described in sub-paragraph (c).
- (8) The district includes the fishery known as the Holy Island station of the Goswick Fisheries.

Definition of Estuary Limits

3.—(1) For the purposes of this Order “estuary limits” means the limits which divide each river including its mouth or estuary from the sea.

- (2) The estuary limits of a river shall be the limits fixed and defined—
- (a) in relation to the Tweed, by paragraphs (3) and (4); and
 - (b) in relation to other rivers in the district, by an estuary limits order made under paragraph (5),

and, where no such limits are fixed for a river as provided for in this article, the estuary limits of a river shall be the natural limits which divide a river (including its mouth or estuary) from the sea.

(3) The coastal limits of the estuary of the Tweed are, in the north, high water mark on the boundary between Scotland and England and, in the south, grid reference NU 0483246702.

(4) The estuary limits of the Tweed (which may be referred to as “the Mouth of the Tweed”) are formed by—

- (a) in the north, the line described in article 3(5)(c);
- (b) in the south, a line running from grid reference NU 0483246702, parallel to the line described in article 3(5)(b), and extending seaward to the line described in article 3(5)(d); and
- (c) in the east, the straight line between the seaward ends of the lines described in sub-paragraphs (a) and (b).

(5) The Scottish Ministers may, in relation to any other river in the Tweed district, and whether or not any such limits have previously been fixed, by order (in this Order referred to as an “estuary limits order”) prescribe estuary limits for that river.

(6) Paragraphs 1, 2 and 8 to 14 of Schedule 2 shall have effect in relation to the making of an estuary limits order.

(7) Where the estuary limits of any river have been fixed, after consulting the Commission, the Scottish Ministers may, by order, change a reference used in describing estuary limits where the suitability of that reference for that purpose has lessened or ceased; but such an order shall not be an estuary limits order.

Interpretation

- 4.—**(1) In this Order, unless the context otherwise requires—
- “the 2003 Act” means the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003(1);
- “the Tweed Acts” means the Tweed Fisheries Act 1857(2), the Tweed Fisheries Amendment Act 1859(3), and the Tweed Fisheries Act 1969(4);

(1) 2003 asp 15.
(2) 1857 c.cxlviii.

“annual value” means the annual rental value of a specified salmon fishery as entered in the valuation roll;

“boat” includes any craft or vessel used in fishing;

“clerk” means the clerk to the Commission;

“The Commission” has the meaning given in article 5 and “Commissioners” shall be construed accordingly;

“dam” means any weir, dam, dyke, cauld, mill dam or other structure constructed in the bed of any stream, river or loch for the purpose of controlling, impounding or diverting water therefrom;

“Environment Agency” has the meaning given by section 1 of the Environment Act 1995⁽⁵⁾;

“estuary limits” has the meaning given in article 4;

“fish farm” has the meaning given in section 10(1) of the Diseases of Fish Act 1937⁽⁶⁾;

“fixed engine” means any engine, net or trap used for the taking of salmon, other than a sweep net which when in use is hauled through the water continuously and is not allowed to be stationary in the water or to drift with the current;

“foul hooking” means any method of deliberately hooking or attempting to hook a fish other than by inducing the fish to take the hook in its mouth;

“freshwater fish” means any fish living in fresh water, including trout and eels and the fry of eels but exclusive of salmon and of any fish which migrate between the open sea and tidal waters;

“inland waters” includes all rivers above estuary limits and their tributary streams, and all waters, watercourses and lochs whether natural or artificial which drain or drain to some extent into the sea;

“justice” and “justices” means a justice of the peace or two or more justices of the peace acting for the county, city or place where the matter requiring action by such justice or justices arises;

“lade” includes any artificial channel through which water is diverted from any inland water in which salmon or trout are present;

“land” includes land covered by water;

“package” includes any box, basket, barrel, case, receptacle, sack, bag, container, wrapper or other thing in which salmon or trout is placed for the purpose of carriage, consignment or exportation;

“prescribed” means prescribed by an order made by the Scottish Ministers under this Order;

“proprietary Commissioner” means a person who is a Commissioner by virtue of having been elected as a Commissioner under article 7, or who has been deemed as such under article 5(7);

“proprietor” means any person, partnership, company or corporation which is the proprietor of a salmon fishery or which receives or is entitled to receive the rents of such fishery on its own account or as trustee, guardian or factor for any person, company or corporation;

“representative Commissioner” has the meaning given in article 7;

“rod and line” has the meaning given in article 26;

“salmon” means all fish of the species *Salmo salar* and migratory fish of the species *Salmo trutta* and commonly known as salmon and sea trout respectively or any part of any such fish;

(3) 1859 c.lxx.

(4) 1969 c.xxiv.

(5) 1995 c. 25.

(6) 1937 c. 33. Section 10(1) was amended by the Diseases of Fish Act 1983 (c. 30), section 4(3).

“salmon fishery district” has the meaning given in section 34 (salmon fishery districts) of the 2003 Act;

“specified salmon fishery” means a salmon fishery in the district—

- (a) of an annual value of not less than £30; or
- (b) which extends to 800 metres in length where such fishery is on one side only of a river or 400 metres in length where such fishery comprehends both sides of a river; or
- (c) the proprietor of which has elected, by notice in writing to the Commission, that he wishes the fishery to be treated as a salmon fishery of an annual value of £30;

“treasurer” means the treasurer to the Commission;

“trout” means non-migratory trout of the species *Salmo trutta* living in fresh waters or in estuaries;

“the Tweed district” has the meaning given in article 3, and “district” shall be construed accordingly;

“valuation roll” means the valuation roll prepared by the Commission under article 16;

“vehicle” means any conveyance other than a vehicle used for the purposes of a public passenger transport service within the meaning given in section 63(10) of the Transport Act 1985(7);

“water bailiff” means any person appointed as such by—

- (a) the Commission under article 12(b); or
- (b) by the Scottish Ministers under article 60(5).

(2) References to an occupier of a right of fishing for freshwater fish are references to a person who is in possession of that right as tenant under a lease of land to which such a right pertains or under a contract which by virtue of article 74 is deemed to be a lease and, for the purposes of this paragraph “tenant” and “lease” include “subtenant” and “sublease” respectively.

The River Tweed Commission

5.—(1) There shall be a body corporate to be known as the River Tweed Commission, (“the Commission”).

(2) The Commission shall comprise—

- (a) every proprietor of a specified salmon fishery who has been elected as a proprietary Commissioner in accordance with article 6; and
- (b) every person appointed as a representative Commissioner in accordance with article 7.

(3) Property may be held by the Commission in the name of the River Tweed Commission.

(4) Any property, rights or powers held or obligations incumbent upon the Commissioners appointed under the Tweed Acts whether by, under or by virtue of any enactment, rule of law or otherwise shall be transferred to and held by, or as the case may be incumbent upon, the Commission.

(5) Any interest of the Commissioners in any civil proceedings pending before any court or tribunal immediately before the date on which this Order comes into force shall on that date transfer to, and be exercisable by, the Commission.

(6) The Commission may sue or be sued in the name of the clerk or, in the absence of the clerk, of any three named Commissioners.

(7) 1985 c. 67.

(7) Proprietary Commissioners holding office as members of the council under section 6 of the Tweed Fisheries Act 1969 shall become proprietary Commissioners under article 6 from the date on which this Order comes into force until the first election held under article 6.

(8) Representative Commissioners appointed under section 5 of that Act shall continue in office from the date on which this Order comes into force as if appointed under article 7.

Election of Proprietary Commissioners

6.—(1) On or before the first Monday in March in each year, a meeting of the proprietors of specified salmon fisheries shall be held within the former burgh of Kelso or at such other place within the district as the Commission may decide for the purpose of electing thirty-eight of their number as proprietary Commissioners.

(2) At every such meeting—

- (a) the proprietors present shall elect one of their number to be the convener; and
- (b) each proprietor present shall have one vote, except that in the case of an equality of votes the convener shall be entitled to a second or casting vote.

(3) Each person elected in accordance with the provisions of paragraph (1) shall hold office as a proprietary Commissioner for the ensuing year unless that person shall previously die, resign, become disqualified or otherwise cease to be a proprietor.

(4) If any vacancy shall arise in the office of a proprietary Commissioner the remaining proprietary Commissioners shall select a proprietor of a specified salmon fishery to fill the vacancy and the person so selected shall be entitled to hold office as a proprietary Commissioner so long only as the Commissioner in whose stead that person is elected would have been entitled to have continued in office.

(5) For the purposes of this article, “proprietor” includes not more than one person authorised by—

- (a) in the case of a fishery in which more than one person has a pro indiviso share, such persons; or
- (b) in the case of a fishery in which the rights to that fishery are shared by more than one person in any other way, such persons,

but in neither case does it include, except by virtue of this paragraph, a person whose right to that fishery is so shared.

Representative Commissioners

7.—(1) Each of the local authorities specified in column 1 of Schedule 1 shall appoint the respective number of representatives specified in column 2 of that Schedule to act as representative Commissioners for the purposes of this Order, and each such Commissioner shall hold office from the date of appointment until the period of appointment ends, or that person shall die, resign, become disqualified or otherwise cease to be a Commissioner.

(2) A person appointed to act as a representative Commissioner by a local authority need not be a member or officer of the local authority by whom that representative is appointed.

(3) The representatives appointed as Commissioners by a local authority shall be persons appearing to the local authority to be persons sufficiently representing the interests of those respective parts of the area of that local authority as are specified in column 3 of Schedule 1, and the number of persons appointed in respect of each part so specified shall be in accordance with the respective numbers specified in column 4 of that Schedule.

(4) Of the representatives appointed in respect of each specified part of the area of a local authority, the respective number specified in column 5 of Schedule 1 shall be persons appearing to the

local authority to be persons sufficiently representing the interests of freshwater fishing associations or clubs within that part.

(5) If any vacancy shall arise in the office of a representative Commissioner, the local authority in whom the appointment is vested shall as soon as practicable appoint another person to act as a Commissioner.

(6) All appointments under this article shall be made in writing and may be for such period as the local authority in whom the appointment is vested determines.

Chief Commissioner and Deputy

8.—(1) Subject to paragraph (2) at every annual general meeting the Commission shall elect a Chief Commissioner and a deputy from among its number and the persons so elected shall hold office until the next ensuing annual general meeting.

(2) If any vacancy occurs in the office of Chief Commissioner or deputy before the expiration of that person's term of office the Commission shall, as soon as practicable, hold an ordinary meeting for the purpose of filling such vacancy.

(3) The Chief Commissioner or, in the Chief Commissioner's absence, the deputy shall preside at all meetings of the Commission.

(4) Where neither the Chief Commissioner nor the deputy is present at a meeting, a Commissioner elected by the meeting shall preside at that meeting.

Functions of the Commission

9. The Commission may do such acts, execute such works and incur such expenses as may appear to it expedient for—

- (a) the protection or improvement of the salmon and freshwater fisheries in the district;
- (b) the preservation and increase of salmon and freshwater fish in the district; and
- (c) the stocking of the district with salmon and freshwater fish.

Application of the seal

10.—(1) The Commission shall have a seal.

(2) The application of the seal of the Commission shall be authenticated by the clerk or, in the absence of the clerk, by any three Commissioners named by the Commission for this purpose.

(3) Any document which the Commission is authorised or required by or under any enactment to make or issue may be signed on behalf of the Commission by the clerk or any other officer who has been authorised for the purpose, whether generally or specifically, by the Commission or, in the absence of such authorised clerk or officer, by any three Commissioners, named by the Commission for this purpose.

(4) Every document purporting to be an instrument made or issued by or on behalf of the Commission and to be duly executed under the seal of the Commission, or to be signed or executed by a person authorised by the Commission for the purpose, shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

(5) Any notice which is required or authorised, by or under any provision of any enactment or Act of the Scottish Parliament, to be given, served or issued by, to or on the Commission shall be in writing.

Officers and Employees

Officers and employees

- 11.—(1) On such terms and conditions as it thinks fit, the Commission—
- (a) shall appoint a clerk to the Commission;
 - (b) shall appoint a superintendent of water bailiffs, together with such other water bailiffs as it thinks fit;
 - (c) may appoint a treasurer to the Commission; and
 - (d) may appoint such other persons to act in such capacities as it thinks fit.
- (2) No person may hold the offices of clerk and treasurer at the same time.
- (3) A person who is employed in any capacity by the Commission shall, for so long as that person is so employed, be disqualified from acting or voting as a Commissioner, or from representing or voting for any Commissioner, at any meeting of the Commission.
- (4) Any person employed, immediately before the date on which this Order comes into force, by the Commissioners appointed under the Tweed Acts is transferred on that date to the employment of the Commission.
- (5) The contract of employment of any person transferred under paragraph (4)—
- (a) is not terminated by the transfer; and
 - (b) has effect from the date of transfer as if originally made between that person and the Commission.

Meetings of the Commission

Meetings of the Commission

- 12.—(1) The Commission shall hold an annual general meeting on the first Monday in March or as soon thereafter as practicable every year.
- (2) The Commission may hold such ordinary meetings as it may from time to time determine.
- (3) The clerk of the Commission shall, on a requisition by any three Commissioners (of whom one must be the Chief Commissioner or the deputy Chief Commissioner) convene a special meeting.
- (4) The requisition must state the objects of the meeting and must be signed by the requisitionists.
- (5) No special meeting shall be called at less than 48 hours' notice.
- (6) All meetings of the Commission shall be held within the former burgh of Kelso or at such other place within the district as it may decide.

Quorum at Commission meetings

13. The Commission shall fix the quorum for any of its meetings at such number, not being less than 9, as it may determine.

Votes at Commission meetings

- 14.—(1) Every member of the Commission present at any meeting of the Commission shall have one vote, except that, in the case of an equality of votes, the person presiding shall be entitled to a second or casting vote.
- (2) All questions arising at any meeting of the Commission shall be decided by a majority of the votes cast by the Commissioners present at the meeting.

(3) It shall be lawful for every Commissioner from time to time to nominate, by instrument in writing under that Commissioner's hand, a person to be proxy for, and represent and act for that Commissioner at any meeting or meetings of the Commission, and the person so nominated shall be entitled, in the absence of the nominating Commissioner, to vote at the meeting or meetings of the Commission for that Commissioner.

(4) No act or proceeding of the Commission shall be questioned on account of any vacancy in its membership and no defect in the qualification or appointment of any person acting as a Commissioner shall vitiate any proceedings of the Commission in which that Commissioner has taken part.

(5) The minutes of any meeting of the Commission shall be signed by the Commissioner presiding at the meeting and shall be conclusive evidence of the proceedings; and a meeting so minuted shall be presumed to have been duly convened and held and all Commissioners present to have been duly qualified.

Expenses

15.—(1) The Commission may defray any travelling or other expenses reasonably incurred by a Commissioner in carrying out any duties on behalf of the Commission.

(2) Any expenses defrayed under paragraph (1) shall not include expenses for attending any meeting of the Commission.

Valuation and Finance

Valuation

16.—(1) The Commission shall, not less frequently than every five years, determine the annual value of each salmon fishery in the district, and shall—

- (a) enter that valuation in a valuation roll to be maintained by it for that purpose; and
- (b) intimate the determination to the proprietor or occupier of the salmon fishery concerned.

(2) Any proprietor aggrieved by a determination made under paragraph (1) may, within ten days of receipt of the determination, appeal against that determination to the sheriff or justices, and shall at the same time intimate any such appeal to the clerk.

(3) A sheriff or justice who sustains an appeal made under paragraph (2) shall determine the value of the fishery in question, and the Commission shall adjust the entry in respect of that fishery accordingly.

Information for valuation

17.—(1) The Commission shall have power to collect such information as it considers necessary for the purpose of valuing any salmon fishery in the district and to require any proprietor or occupier of a salmon fishery to furnish it with such information in such form and at such times as it may determine.

(2) The Commission may use any information collected under paragraph (1) for the purposes of carrying out its functions under article 9.

(3) Any proprietor or occupier of a fishery who wilfully refuses to comply with any requirement made in pursuance of this article or makes any statement in relation to such a requirement which is false in a material particular shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) The Scottish Ministers may make available to the Commission for the purposes of valuations under this article any information collected by them under article 22 insofar as such information relates to fisheries in the district.

Fishery Assessment

18.—(1) The Commission shall have power to impose an assessment to be known as the fishery assessment on each specified salmon fishery in the district.

(2) The fishery assessment shall be assessed at such uniform rate as is determined for all specified salmon fisheries in the district by the Commission and shall be exigible according to the valuation as entered in the valuation roll.

(3) The Commission shall intimate a notice of assessment made under paragraph (1) to the proprietor or occupier of a specified salmon fishery.

Enforcement

19.—(1) Proceedings for the recovery of money owed to the Commission in respect of arrears of fishery assessment may be taken before the court having jurisdiction over—

- (a) the area in which the fishery is situated; or
- (b) the place where the debtor lives or is found.

(2) The powers under paragraph (1) to recover arrears of fishery assessment include power to recover interest, chargeable at such rate as the Scottish Ministers may determine on such arrears from, in the case of recovery of arrears which have been outstanding for at least 3 months from the date of issue of a notice of assessment, that date until payment or the commencement of an action for payment, whichever is the earlier.

Annual report

20. Each year, the Commission shall prepare—

- (a) a general report of its activities over the past year; and
- (b) a statement of accounts, which shall be audited,

and the clerk shall call a meeting of the proprietors of specified salmon fisheries for the purposes of considering the report and the audited accounts.

Miscellaneous

Power to conduct inquiries and to obtain information

21.—(1) For the purpose of protecting and developing stocks of salmon and freshwater fish in the Tweed district the Scottish Ministers and the Commission shall have power, jointly or severally, to conduct inquiries and investigations into questions of practical or scientific importance to salmon and freshwater fisheries; and for such purpose to enter on and conduct such operations as may be necessary in any fishery in the Tweed district, provided always that no damage shall be done to such fishery and that no interference shall be caused to the rights of the owner or occupier of such fishery.

(2) The Scottish Ministers shall have power—

- (a) to collect such statistics relating to the number of salmon caught in any salmon fishery and the species, description and weight, and method and date of capture of such salmon as they may consider necessary, and to require any proprietor or occupier of a salmon fishery

to furnish them with such statistics relating to such matters in such form and at such times as they may determine; and

(b) to publish such statistics in such manner as they think fit.

(3) Any proprietor or occupier of a fishery who wilfully refuses to comply with any requirement made in pursuance of this article, or makes any statement in relation to such a requirement which is false in a material particular, shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 3 on the standard scale.