

Draft Order in Council laid before Parliament and the Scottish Parliament under paragraphs 1 and 2 of Schedule 7 to the Scotland Act 1998 for approval by resolution of each House of Parliament and of the Scottish Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No.

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

RIVER, SCOTLAND

RIVER, ENGLAND AND WALES

The Scotland Act 1998 (River Tweed) Amendment Order 2015

Made - - - - 2015

Coming into force - - 2015

At the Court at the day of

Present,

The Queen's Most Excellent Majesty in Council

This Order is made by Her Majesty in Council in exercise of the powers conferred upon Her by sections 111 and 113(2), (3), (4), (5) and (7) of the Scotland Act 1998(a).

In accordance with paragraphs 1 and 2 of Schedule 7(b) to that Act, a draft of this Order was—

- (a) laid before and approved by a resolution of each House of Parliament; and
- (b) laid before and approved by a resolution of the Scottish Parliament.

Accordingly, Her Majesty, by and with the advice of Her Privy Council, makes the following Order.

Citation and commencement

1. This Order may be cited as the Scotland Act 1998 (River Tweed) Amendment Order 2015 and shall come into force on the day after the day on which it is made.

(a) 1998 c.46. Section 111 was amended by the Marine and Coastal Access Act 2009 (c.23), section 231 and by the Scotland Act 1998 (River Tweed) Order S.I. 2006/2913, Schedule 4. Section 113 was amended by the Scotland Act 2012 (c.11), section 39.

(b) There are amendments to Schedule 7 not relevant to this Order.

Amendment of the Scotland Act 1998 (River Tweed) Order 2006

2.—(1) The Scotland Act 1998 (River Tweed) Order 2006^(a) is amended in accordance with this article.

(2) After article 43 insert—

“43A Salmon carcass tagging

(1) The Scottish Ministers may, by order, make provision for or in connection with tagging the carcasses of salmon.

(2) An order under paragraph (1) may, in particular, make provision—

- (a) about—
 - (i) the nature and form of tags;
 - (ii) the information which tags are to contain and the nature and form of that information;
 - (iii) applications for, and the supply, issue and storage of tags;
 - (iv) the persons or descriptions of persons who may supply and issue tags, including provision about registration of such persons;
 - (v) the method of affixing tags to carcasses and the circumstances in which, and the time at or by which, they are to be affixed;
 - (vi) the circumstances in which, and the time at or by which, tags may be removed;
 - (vii) the steps to be taken in the event of loss, or damage to, tags;
- (b) for or about the keeping of records in connection with fishing for, taking, and tagging of salmon to which the order applies (including the form and content of such records);
- (c) for or about the inspection or examination of those records, or the information contained in them, by persons or descriptions of persons mentioned in paragraph (e), by such methods as the order may specify, and the steps to be taken in the event of loss of, or damage to, the records;
- (d) for or about the inspection or examination of tags by persons or descriptions of persons mentioned in sub-paragraph (e) including provision about the retention of tags after their removal;
- (e) for or about persons, or descriptions of persons, responsible for enforcing and ensuring compliance with the order (including the appointment and functions of such persons);
- (f) for or about the seizure, detention and destruction by persons, or descriptions of persons, mentioned in sub-paragraph (e) of salmon—
 - (i) that have not been tagged; or
 - (ii) from which a tag has been removed otherwise than, in accordance with the provisions of the order;
- (g) for or about the imposition by the Scottish Ministers of charges for the recovery of any reasonable costs they incur in connection with the supply or issue of tags (including charges in relation to the administration costs associated with the imposition of such charges);
- (h) for exemptions and exceptions to the order and for matters in respect of which the order does not apply.

^(a) S.I. 2006/2913. Schedule 1 was amended by article 27(1) of S.I. 2009/837.

- (3) The order under paragraph (1) may make—
 - (a) different provision for different purposes and areas;
 - (b) incidental, supplementary, consequential, transitional, transitory or saving provision.
- (4) A person commits an offence if the person—
 - (a) sells, offers or exposes for sale, or has in the person’s possession, any salmon—
 - (i) that has not been tagged in accordance with an order made under paragraph (1); or
 - (ii) from which a tag has been removed otherwise than in accordance with such an order;
 - (b) acts in contravention of such an order;
 - (c) fails to take any action required of that person or (as the case may be) fails to comply with any requirement imposed on that person by such an order.
- (5) It is a defence for a person charged with an offence under paragraph (4)(c) to show that the person had a reasonable excuse for failing to take any action or comply with any requirement as mentioned in that paragraph.
- (6) A person who commits an offence under paragraph (4)—
 - (a) is liable on summary conviction to a fine not exceeding level 4 on the standard scale;
 - (b) may be convicted on the evidence of one person.”.
- (3) In article 51 (exemptions in relation to fish farming)—
 - (a) in paragraph (1) after “under” insert “article 43A or”; and
 - (b) in paragraph (5) after “41(1)(b)” insert “, 43A(4)(a) or (b)”.
- (4) In article 75 (application to the Crown) in paragraph (1) for “and 40 and” substitute “, 40 and 43A, Part 3 and”.

Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Scotland Act 1998 (River Tweed) Order 2006 (“the 2006 Order”) which makes provision for salmon and freshwater fisheries in the Tweed district. The Tweed District is defined in article 2 of the 2006 Order. This Order introduces a new enabling power to allow provision to be made for the tagging of salmon. It also makes consequential amendments to articles 51 (exemptions in relation to fish farming) and 75 (Crown application) of the 2006 Order. In addition article 75 is amended so that Part 3 of the 2006 Order (enforcement) applies to those provisions listed in article 75(1).

A Business Regulatory Impact Assessment has not been carried out as this Order creates an enabling power. A Business Regulatory Impact Assessment will be prepared when the scheme is finalised and consultation on the draft Order made under article 43A of the 2006 Order is carried out.

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£4.25

UK2014101530 10/2014 19585

<http://www.legislation.gov.uk/id/ukdsi/2015/9780111121931>

ISBN 978-0-11-112193-1



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