

EXPLANATORY MEMORANDUM TO
THE SCOTLAND ACT 1998 (RIVER TWEED) AMENDMENT ORDER 2015

2015 No. [XXXX]

- 1.** 1.1 This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

This Order will amend the Scotland Act 1998 (River Tweed) Order 2006 to make provision which will allow the Scottish Ministers to create a regime for the tagging of salmon caught in the River Tweed.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Context

4.1 The Scotland Act 1998 (River Tweed) Amendment Order 2015 will be made in exercise of the powers conferred by sections 111 and 113(2), (3), (4), (5) and (7) of the Scotland Act 1998. This instrument is subject to affirmative resolution procedure in the UK Parliament and the Scottish Parliament, and will be made by Her Majesty in Council.

4.2 Section 111 of the Scotland Act 1998 provides that Her Majesty may, by Order in Council, make provision for, or in connection with, the conservation, management and exploitation of salmon, trout, eels and freshwater fish in the Borders Rivers. For the purposes of section 111, the Borders Rivers mean the Rivers Tweed and Esk.

5. Territorial Extent and Application

This instrument extends to Scotland and England and applies only to the Tweed District.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State for Scotland, the Rt Hon David Mundell MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Scotland Act 1998 (River Tweed) Amendment Order 2015 are compatible with the Convention rights.”

7. Policy background

7.1 Freshwater fisheries management and conservation in Scotland is largely regulated by the Salmon and Freshwater Fisheries (Scotland) Act 2003 (“the 2003 Act”). In September 2013 an amendment to the 2003 Act came into force providing a new enabling power allowing the Scottish Ministers to create a regime for the tagging of salmon caught in Scotland. New section 21A of the 2003 Act provides the power to require salmon which are caught (and retained) to be tagged. The power allows provision to be made around the nature and form of the tags, record keeping and enforcement. The purpose behind the regime is to enhance existing conservation measures for wild salmon and to ensure that fish which are caught in Scotland and find their way to market are traceable. That will allow tagged fish to be measured against fish stocks. In addition, this will supplement existing mechanisms for identifying unlawfully caught fish.

7.2 Although fisheries management is generally devolved to the Scottish Parliament, separate arrangements prevail in respect of the Border rivers. As noted above, section 111 of the Scotland Act 1998 enables an Order in Council to be made which may make stand-alone provision for, or in connection with, the conservation, management and exploitation of salmon, trout and other freshwater fish specified in that section.

7.3 Currently there is an Order made under section 111 in respect of the Tweed, the Scotland Act 1998 (River Tweed) Order 2006 (“the 2006 Order”). This 2006 Order broadly mirrors the provisions of the 2003 Act. It consolidates the legislation which applies in the Tweed and establishes the River Tweed Commission which is charged with management of the Tweed and its fisheries.

7.4 The 2006 Order sets the extent of the River Tweed district which is the area within which the Commission has responsibility. For the rest of Scotland (with the exception of the Upper Esk) management of fisheries is carried out by District Salmon Fisheries Boards under the 2003 Act. Broadly the 2006 Order replicates much of the 2003 Act – it creates offences in relation to methods of fishing, provides order making powers (available to the Scottish Ministers) to make salmon conservation orders and sets annual and weekly close times. However, existing provisions in the 2006 Order do not provide the necessary powers to create a tagging regime. Therefore, a parallel power to section 21A of the 2003 Act is required. Article 75 of the 2006 Order (Crown application) is also amended to ensure that the new tagging regime will apply to Crown land; a reference to Part 3 of the Order is also included here. The effect is that the enforcement functions under the 2006 Order will apply to Crown land for the tagging regime and may also operate for those provisions which already apply to Crown land.

7.5 It is the intention of the Scottish Government that the regime will: require the use of numbered tags with the method of affixing the tags being prescribed; not apply to fish which are caught by rod and line (as rod and line fishing for salmon is permitted but the fish cannot be sold on); provide for the recording of information and prohibitions on the removal of, or tampering with, tags; and, allow water bailiffs and constables, who

exercise power powers under Part 3 of the 2006 Order, to fulfil enforcement functions in respect of the tagging requirements for the Tweed.

7.6 A regime for tagging salmon already exists in England (and in the Lower Esk in Scotland) by virtue of byelaws made by the Environment Agency. To ensure that there is no “gap” it is desirable to introduce a parallel regime for the River Tweed. An amendment to the 2006 Order is therefore necessary to achieve this.

8. Consultation outcome

8.1 Although there has been no general consultation specific to the amendments of this Order, all amendments contained in this Order have the approval of the Department for Environment, Food and Rural Affairs and the Scottish Government.

8.2 With regard to wider consultation, the draft order has been informed by the progress of the Aquaculture and Fisheries (Scotland) Bill 2013. The Scottish Government will be consulting on their draft regulation although preliminary discussions have already taken place with those directly impacted by the proposed legislation.

9. Guidance

This Order stands alone, no further guidance is required.

10. Impact

10.1 This instrument has no impact of a regulatory nature on the private sector or civil society organisations and will not impose or reduce costs.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument although a draft Business and Regulatory Impact Assessment (BRIA) will be prepared for the provisions in the order which will then create the tagging regime using the power created in this instrument.

11. Regulating small business

The legislation does apply to small business (see 10.3 – Business and Regulatory Impact Assessment) operating on a commercial basis.

12. Monitoring & review

No monitoring or review of this Order are required. However, the River Tweed Commission publishes an Annual Report and Accounts to report on its activities.

13. Contact

Emma Lopinska at the Scotland Office (Tel: 0131 244 9016 or email: emma.lopinska@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.