

POLICY NOTE

THE SCOTLAND ACT 1998 (RIVER TWEED) AMENDMENT ORDER 2015

SI 2015/XX

1. The above instrument is made in exercise of the powers conferred by sections 111 and 113(2), (3), (4), (5) and (7) of the Scotland Act 1998 (c. 46). 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 other freshwater fish in the Border Rivers. For the purposes of section 111, the Border Rivers means the Border Rivers Tweed and Esk. This Order applies to the Tweed District.
2. The instrument amends the Scotland Act 1998 (River Tweed) Order 2006 to insert a new power allowing a regime for the tagging of salmon caught in the Tweed District to be created. The instrument is subject to affirmative resolution procedure in the Scottish Parliament and in the UK Parliament and will be made by Her Majesty in Council. This instrument extends to Scotland and England and applies only to the Tweed District.

Policy Objectives

3. 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.
4. 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.
5. 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.
6. 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. 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.

8. 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.

Consultation

9. 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.

10. With regard to wider consultation, the draft order has been informed by the progress of the Aquaculture and Fisheries (Scotland) Bill 2013. Preliminary discussions have already taken place with those directly impacted by the proposed legislation. The draft order which will then create the tagging regime will itself be subject to a consultation.

Impact Assessments

11. This instrument confers an enabling power on the Scottish Ministers to create a salmon tagging regime. It therefore has no impact of a regulatory nature on the private sector or civil society organisations and will not impose or reduce costs. There is no impact on the public sector. There are no equality impact issues.

12. 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.

Scottish Government
October 2014