

EXPLANATORY MEMORANDUM TO
THE SCOTLAND ACT 1998 (RIVER TWEED) ORDER 2006

2006 No. [XXXX]

1. This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

2. Description

This Order is made to retain what is effectively Scottish legislation in relation to salmon and freshwater fisheries conservation, management and exploitation in the River Tweed catchment. The opportunity has also been taken to review the Tweed Acts (1857-1969) to update, amend and where necessary repeal certain provisions to ensure clarity and correspondence with Scots Law.

The order will clarify the previously complicated descriptions of the district and estuary limits, and provide for a more modern and effective administrative and management structure.

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

3.1 This order extends to the United Kingdom, with the exception of Part 4 which extends to Scotland only and Part 5 which extends to England only. The order applies only in relation to the Tweed district, as defined in article 2(1) of the order.

3.2 The above order is to be made in accordance with the provisions of sections 111(1) and paragraphs 1 and 2 of Schedule 7 to the Scotland Act 1998 (the “1998 Act”). Under the provisions of section 111 of the 1998 Act, 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 Border Rivers.

4. Legislative Background

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

4.2. As a result of Scottish Law Commission recommendations, the salmon and freshwater fisheries legislation in Scotland, much of which dated back to the 19th Century (and with some dating back to the 17th Century), was consolidated in 2003. The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 was passed by the Scottish Parliament on 26th March 2003, received Royal Assent on 1st May 2003, and was brought into force on 1 April 2005. This Act extends to all of Scotland, except those parts of the Tweed and Esk catchments that lie within Scotland.

4.3. This is because, although the River Tweed catchment lies mostly in Scotland, the lower reaches, some major tributaries and the estuary of the river lie in England. Scots and English Law relating to salmon and freshwater fisheries matters differ significantly in a number of respects. Where conservation, management and exploitation of fishery resources within a single river catchment are concerned, it makes sense to operate, insofar as possible, one set of legislation. The salmon and freshwater fisheries legislation in force historically in relation to the Tweed comprises certain aspects of the general Scottish legislation and the Tweed Acts of 1857-1969. The River Esk is governed under English law. The Scottish Executive, DEFRA and those currently charged with the management of fisheries in the River Tweed, the River Tweed Council, are all agreed that a similar situation should be retained.

4.4 The Tweed district extends beyond the River Tweed itself, which is the definition used in section 111 of the Scotland Act. The Scotland Act definition however refers to the definition in the Salmon and Freshwater Fisheries Act 1975, which in turn refers to the Tweed Fisheries (Amendment) Act 1859. This is a definition of an area larger than that of the River Tweed and therefore the definition envisaged by the Scotland Act is of the Tweed district, rather than the River Tweed itself..

4.5 Insofar as provisions relate to the Tweed, the order repeals:

- Salmon Fisheries (Scotland) Act 1868;
- Freshwater Fish (Scotland) Act 1902;
- Trout (Scotland) Act 1933;
- Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951;
- Rivers (Prevention of Pollution) (Scotland) Act 1965 (section 13(1));
- Control of Pollution Act 1974 (paragraph 11 of Schedule 3);
- Freshwater and Salmon Fisheries (Scotland) Act 1976;
- Fishery Limits Act 1976 (paragraph 12 of Schedule 2);
- Fisheries Act 1981 (paragraphs 18-25 of Schedule 4);
- Salmon Act 1986;
- Water Act 1989 (paragraph 4 of Schedule 17);
- Tweed Fisheries Act 1857;
- Tweed Fisheries Amendment Act 1859;
- Tweed Fisheries Act 1969;
- Salmon (Definition of Methods of Net Fishing and Construction of Nets) (Scotland) Regulations 1992 (S.I. 1992/1974 as amended by S.I. 1993/257 and S.I. 1994/111);
- Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (paragraph 11 in Schedule 4);
- Deregulation (Salmon Fisheries (Scotland) Act 1868) Order 1996 (S.I. 1996/1211);
- Scotland Act 1998 (Border Rivers) Order 1999 (S.I. 1999/1746);
- Salmon Conservation (Scotland) Act 2001.

The enactments repealed either apply wholly to the Tweed or partly to that river. They have all been repealed by the 2003 Act for the rest of Scotland, and are being replaced, for the Tweed, by this Order.

5. Extent

This order applies to the United Kingdom.

6. European Convention on Human Rights

The Parliamentary Under-Secretary of State for Scotland has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Scotland Act 1998 (River Tweed) Order 2006 are compatible with the Convention rights.

7. Policy background

7.1. The overall policy objective is to ensure that coherent and comprehensive legislation dealing with salmon and freshwater fishery matters is provided for any entire river catchment system.

7.2. Thus, the objective of this order is to retain what is effectively Scottish legislation in relation to salmon and freshwater fisheries conservation, management and exploitation in the River Tweed catchment. However, as the making of this Order is not a consolidation exercise, the opportunity has also been taken to review the Tweed Acts to update, amend and where necessary repeal certain provisions to ensure clarity and correspondence with Scots Law.

7.3. In general, the order restates the current legislative position although it has been drafted to ensure greater clarity. The opportunity has been taken to review and amend the legislation relating to a number of other issues, including:

- the administration of salmon and freshwater fisheries management in the Tweed,;
- the definitions of the limits of the Tweed District and Estuary (the “Mouth of the Tweed”);
- methods of fishing and offences related to unauthorised fishing;
- enforcement of the legislation;
- provisions for making, varying and revoking any necessary instruments

7.4 The Order removes the River Tweed Council as an entity and replaces it with the River Tweed Commission. Whilst this is a new body, much of the practices and procedures relating to it, including the election process will simply reflect the existing procedures which have been operating effectively for over thirty years and therefore there is no necessity to list these procedures in detail in the Order.

A number of consequential amendments, repeals and revocations have also been identified.

8. Impact

8.1. A Regulatory Impact Assessment has not been prepared for this order, as it has no impact on business, charities, or voluntary bodies.

8.2. There is no impact on the public sector or public spending.

9. Contact

Alasdair Smith at the Scotland Office, Tel: 020 7270 6756 or e-mail: alasdair.smith@scotland.gsi.gov.uk, can answer any queries regarding the order.