

2007 No. 19

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

RIVER, SCOTLAND

RIVER, ENGLAND AND WALES

The Tweed Regulation Order 2007

Made - - - - - *23rd January 2007*

Laid before the Scottish Parliament *24th January 2007*

Coming into force - - - *15th February 2007*

The Scottish Ministers, in exercise of the powers conferred by articles 35, 36, 52, 53, 54, 68 and 77(3) of the Scotland Act 1998 (River Tweed) Order 2006(a), and of all other powers enabling them in that behalf, hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Tweed Regulation Order 2007 and shall come into force on 15th February 2007.

Interpretation

2.—(1) In this Order—

“fish pass” means any fish pass, ladder, fish way or lift or other device which facilitates the free passage, upstream or downstream, of salmon around, over or through any dam;

“monofilament netting” means any netting containing any mesh the sides of which consist of a single filament of synthetic material;

“off-take” includes a lade;

“operator” in relation to a dam or off-take means its owner or, where another person is in occupation or control of it, that person;

“the principal Order” means the Scotland Act 1998 (River Tweed) Order 2006.

(2) Unless the context otherwise requires, any reference in this Order to a river includes its tributary streams.

Annual close time order

3.—(1) The annual close time for salmon fishing extends from 15th September until 14th February of the following year, both dates inclusive^(a).

(2) Fishing for and taking salmon by rod and line (but only with the artificial fly) is permitted from 15th September until 30th November, and from 1st until 14th February, all dates inclusive.

Weekly close time

4.—(1) The weekly close time for salmon fishing shall extend from 6 pm on Friday until 6 am on the following Monday.

(2) Fishing for and taking salmon by rod and line is permitted on Friday, Saturday and Monday during the weekly close time.

Prohibition of sale in Scotland of salmon taken by rod and line

5. In that part of the Tweed district lying within Scotland no person shall sell, offer or expose for sale any salmon that has been taken by rod and line.

Marking of boats

6.—(1) Every owner and occupier of a fishery within or of land adjoining the waters of the district who uses any boat in the district for the purpose of fishing or any other purpose shall ensure that the name and surname of the owner or occupier and number of the boat is painted on the boat, either in white on black or in black on white, and in letters not less than 5 cm high.

(2) The Commission may from time to time notify in writing the owner or occupier or the agent of the owner or occupier of all boats in the district used for fishing with nets that such boats are to be painted or marked with a colour or mark and every owner and occupier of every fishery using such a boat shall be bound, after such notification, to comply with that notification previous to the commencement of the next fishing season.

Definition of methods of net fishing

7. For the purposes of article 22 of the principal Order—

- (a) fishing for or taking salmon by net and coble means the use of a sweep net, paid out from a boat and worked from the bank or shore or from waters adjacent to the bank or shore, whereby the salmon are surrounded by the net and drawn to the bank or shore, provided that—
 - (i) the net and any warps are not made or held stationary, nor allowed to remain stationary, nor allowed to drift with the current or tide but are both paid out and hauled in as quickly as practicable and kept in unchecked motion by and under the effectual command and control of the fisherman for the purpose of enclosing the salmon within the sweep of the net and drawing them to the bank or shore;
 - (ii) no stakes or dykes or other obstructive devices or other nets are used in association with the net;
 - (iii) the water is not disturbed by throwing of stones or other objects, or splashing or other activity in order to drive salmon into the area to be swept by the net;
 - (iv) the net shall not come within 50 metres of any other such net already being paid out or hauled, until the last mentioned net has been fully hauled in to the bank or shore; and
 - (v) the net is not designed or constructed for the purpose of catching fish by enmeshing them; and

(a) Articles 3 and 4 of this Order replace the provisions of article 76(2) of the principal Order.

- (b) fishing for or taking salmon by bag net, fly net or other stake net means the use of a fish trap (including the use of a landing net to remove salmon from such a trap) consisting of one or more fish courts and associated inscales and wings, together with a leader net designed to lead the salmon into the trap, the whole of which is fixed or moored to the shore or seabed, provided that—
 - (i) no part of the bag net, fly net or other stake net, except mooring warps and anchors, shall extend seawards beyond 1300 metres from the mean low water mark; and
 - (ii) no part of the net or trap is designed or constructed for the purpose of catching fish by enmeshing them.

Regulation of bag nets, fly nets or other stake nets

8. All bag nets, fly nets or other stake nets set or placed beyond the estuary limits of any river in the district shall be subject to the following provisions—

- (a) the nets used in the formation and construction of such fly nets or other stake nets and of the leaders of such bag nets shall be extended evenly so that the meshes of such nets shall be stretched to their full opening;
- (b) every fly net or other stake net shall be placed and constructed so that clear openings for the free passage of salmon can be made in the traps or chambers of the net;
- (c) in every fly net or other stake net there shall be made and kept free from obstruction during the weekly close time a clear opening of at least 90 cm in width from the bottom to the top of the traps or chambers of such nets, so as to allow the free passage of salmon during the whole period of the weekly close time;
- (d) every bag net shall be placed and constructed so that the netting of the leaders can be raised and kept out of the water; and it shall be so raised and kept out of the water during the whole period of the weekly close time;
- (e) the leader of any bag net, fly net or other stake net shall not exceed 300 m in length; and
- (f) the nets used in the formation and construction of bag nets, fly nets or other stake nets shall not comprise monofilament netting.

Regulation of size of meshes

9.—(1) Subject to the provisions of this article it shall not be lawful for the purpose of fishing for salmon to shoot, draw or use in the district any net of which the meshes are less than 90 mm.

(2) Paragraph (1) does not apply to nets used solely for the purpose of landing fish taken by rod and line.

(3) For the purposes of this article mesh size shall be measured in accordance with articles 3 and 4 of Commission Regulation (EC) No. 129/2003 laying down detailed rules for determining the mesh size and thickness of twine of fishing nets(a).

Prohibited baits and lures and area of application

10. Natural prawns and shrimps (whether fresh or preserved, dyed or natural colour) and any part thereof are, in relation to the River Tweed, specified as prohibited for the purposes of the definition of “rod and line” in article 25 of the principal Order.

Specification of baits and lures

11.—(1) Any worm (whether fresh or preserved) and any part thereof is hereby specified as prohibited bait for the purposes of the definition of “rod and line” in article 25 of the principal Order.

(a) O.J. No. L 022, 25.1.03, p.5.

(2) Any lure having more than one hook (other than a lone double, or lone treble, hook) attached to it is hereby specified as a prohibited lure for the purposes of the definition of “rod and line” in article 25 of the principal Order.

Areas of application

12. Article 11 applies to the following areas—

- (a) the Rivers Ettrick and Yarrow;
- (b) the River Tweed (other than its tributaries) downstream from its confluence with the River Ettrick; and
- (c) the following parts of the tributaries of the River Tweed:
 - (i) the Gala Water downstream from (and including) Boleside road bridge;
 - (ii) the Leader Water downstream from (and including) Leaderfoot bridge;
 - (iii) the River Teviot downstream from (and including) the Kelso to St Boswells road bridge;
 - (iv) the River Till downstream from (and including) the Twizel Cauld; and
 - (v) the River Whiteadder downstream from (and including) the Newmills Cauld.

Protection order

13.—(1) Fishing for or taking freshwater fish in the inland waters in the area prescribed in paragraph (2) without legal right or without permission from a person having such a right, is hereby prohibited.

(2) The prescribed area consists of so much of the catchment area of the Rivers Tweed and Eye as lies in Scotland; which area is delineated by a continuous blue line crossing the coast at grid reference NT 772727 and ending crossing the coast at grid reference NT 979576 on the map.

(3) “The map” means the map marked “Area of the Rivers Tweed and Eye Protection Order 1980” signed by the Secretary of State for Scotland and deposited in the office of the Scottish Executive Environment and Rural Affairs Department, Pentland House, 47 Robb’s Loan, Edinburgh EH14 1TY.

(4) For the purposes of this article “inland waters” has the meaning given in articles 68 and 69 of the principal Order.

Application

14.—(1) Articles 15 to 19 shall apply to dams in and off-takes from inland waters which ordinarily contain upstream migrating salmon.

(2) But those articles shall not apply to any dam or off-take—

- (a) the construction, extension or operation of which has been authorised, approved or consented to by the Secretary of State (or by any other Minister of the Crown) under the Electricity (Scotland) Act 1979(a), or any enactment repealed by that Act, or under the Electricity Act 1989; or
- (b) used for the abstraction of water for the purposes of providing a water supply in accordance with the approval of the Secretary of State or the Scottish Ministers granted in the exercise of any power requiring either of them to secure so far as practicable the rights of riparian owners and of other owners of land or salmon fishings.

(a) 1979 c.11; repealed by the Electricity Act 1989 (c.29), with savings.

Dams

15. Every—

- (a) dam the construction of which commenced on or after 1st January 1995;
- (b) mill dam constructed after 28th July 1865; and
- (c) portion of any other mill dam, renewed or repaired at any time after 28th July 1865,

shall be made and maintained watertight by the operator so that no water, which can reasonably be prevented, shall run through it except when necessary to maintain the stability of the dam.

Fish passes

16.—(1) The operator of every dam shall ensure that it is provided with a fish pass which facilitates the free passage of salmon at all times except during any period when, for natural reasons, the flow of the river at the point where the dam is located is so low that salmon would not reasonably be expected to seek passage.

(2) In this article “natural reasons” means any reason which is not related to—

- (a) the operation of the dam; or
- (b) the abstraction of water from the river by the operator of the dam or for a purpose for which the dam was constructed or is being used.

Lades

17.—(1) The operator of every lade shall ensure that it is provided with a sluice to control the flow of water.

(2) The operator shall ensure that the lade and sluice are so constructed as to secure that the quantity of water passing into the lade shall not exceed that which is required for the purpose for which abstraction is made except when it is necessary to do so to prevent damage during high water flow.

Screens

18.—(1) Subject to paragraph (6), the operator of every off-take shall ensure that a screen, which prevents salmon smolts from passing through it, is provided at its entrance or within it.

(2) Where the screen is situated within the off-take, the operator shall ensure that a continuous by-wash is provided immediately upstream of the screen, by means of which salmon smolts may return by as direct a route as practicable to the river from which they came.

(3) Where an off-take returns water to inland waters the operator shall ensure that a screen is provided at the downstream outlet which prevents adult salmon from entering the outlet of the off-take.

(4) A screen may be constructed in the form of a heck or grating or in the form of any device which prevents the passage through it of adult salmon or (as the case may be) salmon smolts.

(5) Any screen and any by-wash provided in accordance with this article shall be so constructed and located as to ensure, so far as reasonably practicable, that salmon are not injured or damaged by it.

(6) This article shall not apply to—

- (a) any off-take which conveys or channels water to ponds or pools and returns it directly to the river from which it was abstracted, provided that the passage of salmon through the off-take until return to the river is, at all times, unobstructed and the water is not subject to any process, contamination or disturbance which might cause injury or damage to the salmon; or
- (b) overflow outlets or spillways used to discharge excess water from reservoirs.

Installation, maintenance etc.

19.—(1) The operator of a dam or off-take shall carry out any work necessary to comply with this Order in such manner as to ensure the minimum practicable interruption to the passage of salmon.

(2) The operator of a dam or off-take shall carry out any maintenance of it or of any fish pass, sluice, by-wash or screen in such manner as to ensure the minimum practicable interruption to the passage of salmon.

Revocations

20. The instruments specified in the Schedule to this Order are revoked in so far as they apply to the Tweed district.

St Andrew's House,
Edinburgh
23rd January 2007

ROSS FINNIE
A member of the Scottish Executive

SCHEDULE

Article 20

Instruments revoked

The River Tweed (Baits and Lures) Regulations 1991**(a)**;

The Rivers Tweed and Eye Protection (Renewal) Order 1991**(b)**;

The Salmon (Definition of Methods of Net Fishing and Construction of Nets) (Scotland) Regulations 1992**(c)**;

The River Tweed (Baits and Lures) Regulations 1998**(d)**;

The Conservation of Salmon (Prohibition of Sale) (Scotland) Regulations 2002**(e)**.

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- (a)** S.I. 1991/2007 (S.160).
 - (b)** S.I. 1991/2234.
 - (c)** S.I. 1992/1974 (S.201).
 - (d)** S.I. 1998/6 (S.3).
 - (e)** S.S.I. 2002/418.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies to the Tweed district as defined in The Scotland Act 1998 (River Tweed) Order 2006 (“the principal Order”).

It brings together the subordinate legislation applying to the Tweed district, and creates no new offences. The Order makes provision in relation to the Tweed district by–

- (a) defining the annual and weekly close times for fishing for salmon, and which methods of fishing shall be permissible during specified periods within these close times; these provisions restate those currently made in the principal Order and in the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951;
- (b) maintaining the prohibition on the sale, in Scotland, of any salmon taken by rod and line; this provision restates, so far as relating to the Tweed district, an order made in 2002 for the purpose of the conservation of salmon;
- (c) making provision that all boats used by the owner or occupier of a fishery in the district for fishing or any other purpose in the district are marked, as previously provided for in the Tweed legislation;
- (d) defining the methods of fishing for salmon by net and regulating the construction of nets; this provision restates measures in the Tweed legislation and regulations relating to construction and use of nets made in 1992, amended in 1993 and 1994;
- (e) prescribing restrictions on the use of baits and lures and the areas to which these apply; these re-state provisions in regulations made in 1991 and 1998;
- (f) maintaining protection order provisions in respect of that part of the Tweed district that lies within Scotland; this re-states the Protection Order renewed in respect of the Rivers Tweed and Eye in 1991;
- (g) re-stating the obligation on operators of dams and off-takes with regard to ensuring the free passage of salmon; this re-states the provisions of the Salmon (Fish Passes and Screens) (Scotland) Regulations 1994.

This Order replaces all other subordinate legislation in relation to salmon and freshwater fisheries which applies to the Tweed district at present.

No Regulatory Impact Assessment has been prepared in respect of this Order.

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