Draft Order in Council laid before Parliament and the Scottish Parliament under section 115 of, and 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. This Draft Order supersedes the Draft laid on 9th December 2004.

DRAFT STATUTORY INSTRUMENTS

2006 No.

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
RIVER, SCOTLAND
RIVER, ENGLAND AND WALES

The Scotland Act 1998 (River Tweed) Order 2006

Made - - - -	*2006*
Coming into force - -	*2006*

At the Court at , the ** day of ** 2006

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, 112(1) and 113 of the Scotland Act 1998(**1**).

In accordance with section 115 of, and paragraphs l and 2 of Schedule 7 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:

(**1**) 1998 c. 46.

PART 1

ADMINISTRATION

Citation, commencement, application and extent

1.—(1) This Order may be cited as the Scotland Act 1998 (River Tweed) Order 2006.

(2) This Order shall come into force on the day after the day on which it is made.

(3) This Order applies only to the Tweed district.

(4) Part 4 extends only to Scotland and Part 5 extends only to England and Wales.

(5) The amendments contained in Part 1 of Schedule 4 have the same extent as the enactments amended.

Definition of the Tweed district

2.—(1) In this Order, "the Tweed district" means the district described in paragraphs (2) to (8).

(2) The coastal limit of the district in the north is high water mark on the boundary between the local government areas of East Lothian and Scottish Borders ("the northern coastal limit").

(3) The coastal limit of the district in the south is grid reference NU 0783243378 ("the southern coastal limit").

(4) The district extends landward to include the catchment area of every river which flows directly or indirectly into the sea between the northern coastal limit and the southern coastal limit.

(5) The district includes the southern seaward sector and the northern seaward sector.

(6) The southern seaward sector is the area bounded by–

(a) in the west, a straight line between high water mark on the boundary between Scotland and England and the southern coastal limit;

(b) in the south, a straight line extending 8 kilometres seaward from the southern coastal limit, and at right angles to the line described at sub-paragraph (a);

(c) in the north, a straight line extending 8 kilometres seaward from high water mark on the boundary between Scotland and England, and at right angles to the line described at sub-paragraph (a); and

(d) in the east, a straight line joining the seaward ends of the lines described at sub-paragraphs (b) and (c) (and parallel to the line described at sub-paragraph (a)),

and includes any water lying to the west of the line described in sub-paragraph (a).

(7) The northern seaward sector is the area bounded by–

(a) in the south, the line described at paragraph (6)(c);

(b) in the north, a line extending 8 kilometres seaward from the northern coastal limit, along a bearing of 026 degrees true from that point;

(c) in the west, the line of the coast at high water mark between the northern coastal limit and high water mark on the boundary between Scotland and England; and

(d) in the east, a line between the seaward ends of the lines described at sub-paragraphs (a) and (b), and parallel to the line described in sub-paragraph (c).

(8) The district includes the fishery known as the Holy Island station of the Goswick Fisheries.

Definition of Estuary Limits

3.—(1) For the purposes of this Order "estuary limits" means the limits which divide each river including its mouth or estuary from the sea.

(2) The estuary limits of a river shall be the limits fixed and defined–

(a) in relation to the Tweed, by paragraphs (3) and (4); and

(b) in relation to other rivers in the district, by an estuary limits order made under paragraph (5),

and, where no such limits are fixed for a river as provided for in this article, the estuary limits of a river shall be the natural limits which divide a river (including its mouth or estuary) from the sea.

(3) The coastal limits of the estuary of the Tweed are, in the north, high water mark on the boundary between Scotland and England and, in the south, grid reference NU 0483246702.

(4) The estuary limits of the Tweed (which may be referred to as "the Mouth of the Tweed") are formed by–

(a) in the north, the line described in article 3(5)(c);

(b) in the south, a line running from grid reference NU 0483246702, parallel to the line described in article 3(5)(b), and extending seaward to the line described in article 3(5)(d); and

(c) in the east, the straight line between the seaward ends of the lines described in sub-paragraphs (a) and (b).

(5) The Scottish Ministers may, in relation to any other river in the Tweed district, and whether or not any such limits have previously been fixed, by order (in this Order referred to as an "estuary limits order") prescribe estuary limits for that river.

(6) Paragraphs 1, 2 and 8 to 14 of Schedule 2 shall have effect in relation to the making of an estuary limits order.

(7) Where the estuary limits of any river have been fixed, after consulting the Commission, the Scottish Ministers may, by order, change a reference used in describing estuary limits where the suitability of that reference for that purpose has lessened or ceased; but such an order shall not be an estuary limits order.

Interpretation

4.—(1) In this Order, unless the context otherwise requires–

"the 2003 Act" means the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003(**2**);

"the Tweed Acts" means the Tweed Fisheries Act 1857(**3**), the Tweed Fisheries Amendment Act 1859(**4**), and the Tweed Fisheries Act 1969(**5**);

"annual value" means the annual rental value of a specified salmon fishery as entered in the valuation roll;

"boat" includes any craft or vessel used in fishing;

"clerk" means the clerk to the Commission;

"The Commission" has the meaning given in article 5 and "Commissioners" shall be construed accordingly;

(**2**) 2003 asp 15.
(**3**) 1857 c.cxlviii.
(**4**) 1859 c.lxx.
(**5**) 1969 c.xxiv.

"dam" means any weir, dam, dyke, cauld, mill dam or other structure constructed in the bed of any stream, river or loch for the purpose of controlling, impounding or diverting water therefrom;

"Environment Agency" has the meaning given by section 1 of the Environment Act 1995(**6**);

"estuary limits" has the meaning given in article 4;

"fish farm" has the meaning given in section 10(1) of the Diseases of Fish Act 1937(**7**);

"fixed engine" means any engine, net or trap used for the taking of salmon, other than a sweep net which when in use is hauled through the water continuously and is not allowed to be stationary in the water or to drift with the current;

"foul hooking" means any method of deliberately hooking or attempting to hook a fish other than by inducing the fish to take the hook in its mouth;

"freshwater fish" means any fish living in fresh water, including trout and eels and the fry of eels but exclusive of salmon and of any fish which migrate between the open sea and tidal waters;

"inland waters" includes all rivers above estuary limits and their tributary streams, and all waters, watercourses and lochs whether natural or artificial which drain or drain to some extent into the sea;

"justice" and "justices" means a justice of the peace or two or more justices of the peace acting for the county, city or place where the matter requiring action by such justice or justices arises;

"lade" includes any artificial channel through which water is diverted from any inland water in which salmon or trout are present;

"land" includes land covered by water;

"package" includes any box, basket, barrel, case, receptacle, sack, bag, container, wrapper or other thing in which salmon or trout is placed for the purpose of carriage, consignment or exportation;

"prescribed" means prescribed by an order made by the Scottish Ministers under this Order;

"proprietary Commissioner" means a person who is a Commissioner by virtue of having been elected as a Commissioner under article 7, or who has been deemed as such under article 5(7);

"proprietor" means any person, partnership, company or corporation which is the proprietor of a salmon fishery or which receives or is entitled to receive the rents of such fishery on its own account or as trustee, guardian or factor for any person, company or corporation;

"representative Commissioner" has the meaning given in article 7;

"rod and line" has the meaning given in article 26;

"salmon" means all fish of the species Salmo salar and migratory fish of the species Salmo trutta and commonly known as salmon and sea trout respectively or any part of any such fish;

"salmon fishery district" has the meaning given in section 34 (salmon fishery districts) of the 2003 Act;

"specified salmon fishery" means a salmon fishery in the district–

(a) of an annual value of not less than £30; or

(b) which extends to 800 metres in length where such fishery is on one side only of a river or 400 metres in length where such fishery comprehends both sides of a river; or

(c) the proprietor of which has elected, by notice in writing to the Commission, that he wishes the fishery to be treated as a salmon fishery of an annual value of £30;

(**6**) 1995 c. 25.
(**7**) 1937 c. 33. Section 10(1) was amended by the Diseases of Fish Act 1983 (c. 30), section 4(3).

"treasurer" means the treasurer to the Commission;

"trout" means non-migratory trout of the species Salmo trutta living in fresh waters or in estuaries;

"the Tweed district" has the meaning given in article 3, and "district" shall be construed accordingly;

"valuation roll" means the valuation roll prepared by the Commission under article 16;

"vehicle" means any conveyance other than a vehicle used for the purposes of a public passenger transport service within the meaning given in section 63(10) of the Transport Act 1985(**8**);

"water bailiff" means any person appointed as such by–

(a) the Commission under article 12(b); or

(b) by the Scottish Ministers under article 60(5).

(2) References to an occupier of a right of fishing for freshwater fish are references to a person who is in possession of that right as tenant under a lease of land to which such a right pertains or under a contract which by virtue of article 74 is deemed to be a lease and, for the purposes of this paragraph "tenant" and "lease" include "subtenant" and "sublease" respectively.

The River Tweed Commission

5.—(1) There shall be a body corporate to be known as the River Tweed Commission, ("the Commission").

(2) The Commission shall comprise–

(a) every proprietor of a specified salmon fishery who has been elected as a proprietary Commissioner in accordance with article 6; and

(b) every person appointed as a representative Commissioner in accordance with article 7.

(3) Property may be held by the Commission in the name of the River Tweed Commission.

(4) Any property, rights or powers held or obligations incumbent upon the Commissioners appointed under the Tweed Acts whether by, under or by virtue of any enactment, rule of law or otherwise shall be transferred to and held by, or as the case may be incumbent upon, the Commission.

(5) Any interest of the Commissioners in any civil proceedings pending before any court or tribunal immediately before the date on which this Order comes into force shall on that date transfer to, and be exercisable by, the Commission.

(6) The Commission may sue or be sued in the name of the clerk or, in the absence of the clerk, of any three named Commissioners.

(7) Proprietary Commissioners holding office as members of the council under section 6 of the Tweed Fisheries Act 1969 shall become proprietary Commissioners under article 6 from the date on which this Order comes into force until the first election held under article 6.

(8) Representative Commissioners appointed under section 5 of that Act shall continue in office from the date on which this Order comes into force as if appointed under article 7.

Election of Proprietary Commissioners

6.—(1) On or before the first Monday in March in each year, a meeting of the proprietors of specified salmon fisheries shall be held within the former burgh of Kelso or at such other place within the district as the Commission may decide for the purpose of electing thirty-eight of their number as proprietary Commissioners.

(**8**) 1985 c. 67.