EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 1998 (SPECIFICATION OF DEVOLVED TAX) (WILD FISHERIES) ORDER 2017

2017 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 The purpose of this Order is to amend Part 4A of the Scotland Act 1998 ("the 1998 Act") such that taxes on specified persons to fund expenditure in respect of the conservation of freshwater fish and their habitats or the management or regulation of wild fisheries are to be devolved taxes.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

4.1 The Scottish Government has indicated that it plans to introduce a Wild Fisheries Bill to the Scottish Parliament. It is intended that its provisions include a new tax raising power that is currently outside the legislative competence of the Scottish Parliament, under Section 29(2)(b) of the 1998 Act, in so far as it relates to reserved matters.

4.2 Schedule 5 to the 1998 Act lists the matters that are reserved to the UK Parliament. Section A1 of Part 2 of Schedule 5 reserves fiscal, economic and monetary policy, including taxes with exceptions of devolved and local taxes. Part 4A of the 1998 Act specifies certain taxes as "devolved taxes". Section 80B in Part 4A provides power to add new devolved taxes. Article 2 of the Order inserts a new chapter into Part 4A so that the tax envisaged by the Wild Fisheries Bill will be a devolved tax and so would be within the devolved legislative competence of the Scottish Government.

5. Extent and Territorial Application

5.1 This instrument extends throughout the United Kingdom.

5.2 The territorial application of the instrument includes Scotland.

6. European Convention on Human Rights

6.1 The 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 (Specification of Devolved Tax)(Wild Fisheries) Order 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 This Order is required to help enable the Scottish Government to implement its plans to modernise the management framework of Scotland's salmon and freshwater fisheries.

7.2 An independent review of Wild Fisheries in Scotland was commissioned by the Scottish Government and concluded in 2014. One of the recommendations of the review was that the Scottish Government has the power to adopt appropriate management tools.

7.3 Such a power would include the flexibility to change the way in which income is raised for fisheries management, currently done through a fisheries assessment levy applied to salmon fisheries at a local level through District Salmon Fishery Boards (DSFBs). This Order will give the Scottish Parliament legislative competence to give Scottish Ministers the power to make regulations imposing a tax on the owners or occupiers of wild, freshwater fisheries of any species, or owners or occupiers of the right to fish for Atlantic Salmon in Atlantic Salmon fisheries. The Scottish Government intends to use this power by introducing provisions to its Wild Fisheries Bill that will allow Scottish Ministers to set, collect and retain fishery assessment levies in circumstances where Scottish Ministers do not approve a DSFB's Fishery Management Plan.

7.4 A further recommendation of the review was to invite proposals for an Angling for all Programme for Scotland, of which an integral element would be a national rod licence scheme, the income from which would be dedicated to financing the programme.

7.5 The levies proposed by the Wild Fisheries Review – both on businesses and individual anglers - are considered by HM Treasury to be taxes and outside the legislative competence of the Scottish Parliament. In order to introduce a Wild Fisheries Bill into its Parliament with provisions on tax, the Scottish Government requires an amendment to be made to Part 4A of the 1998 Act. Section 80B of the 1998 Act provides that Her Majesty may, by Order in Council, amend this Part so as to specify, as an additional devolved tax, a tax of any description.

7.6 This amendment will deliver funding flexibility in Scotland and enable the Scottish Government to address changing (and potentially unforeseen) pressures in the future. Consideration was given to whether or not enabling this provision would adversely affect the rest of the UK and it was concluded that it would not.

Consolidation

7.7 This Order stands alone.

8. Consultation outcome

8.1 The Scottish Government consulted in February 2016 on a draft Wild Fisheries (Scotland) Bill which published draft provisions for some of the recommendations of the Wild Fisheries Review.

8.2 Although there has not been a consultation specific to this Order, the Department for Environment, Food and Rural Affairs, and HM Treasury were consulted during the drafting of this Order. All amendments contained in this Order have the approval of these departments.

8.3 The UK Minister of State for Fisheries and the Secretary of State for Scotland are clear that their agreement to the devolution of the power to raise such a tax is subject to the fact that the tax is to be applied in respect to the conservation and management of freshwater fisheries, and not as a food tax. The Smith Commission, established in 2014 to take forward the devolution commitments on further powers for the Scottish Parliament, considered that a food tax was not a matter for devolution and should be dealt with via alternative routes[1].

9. Guidance

9.1 This Order stands alone.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 A full Impact Assessment has not been prepared for this order, as it has no significant impact on business, charities or voluntary bodies. This is a constitutional measure that concerns the reservation of legislative competence to the UK Parliament. A full Regulatory Impact Assessment will be carried out prior to the Wild Fisheries Bill being introduced in the Scottish Parliament.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The impact of the introduction of any new taxes by Scottish Parliament legislation will be reviewed by the Scottish Government on an annual basis. No monitoring or review of the effects of this Order are required by the UK Government.

13. Contact

13.1 Alastair Noble at the Scotland Office (Telephone: 0207 270 6771 or email: Alastair.Noble@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.

[1] Smith Commission report, published 27 November 2014, detailing Heads of Agreement on further devolution of powers to the Scottish Parliament: http://webarchive.nationalarchives.gov.uk/20151202171017/http://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf , page 28