



The Scottish Parliament
Pàrlamaid na h-Alba

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

AGENDA

8th Meeting, 2016 (Session 4)

Wednesday 9 March 2016

The Committee will meet at 9.30 am in the Robert Burns Room (CR1).

1. **Subordinate legislation:** The Committee will take evidence on the Conservation of Salmon (Scotland) Regulations 2016 (2016/115); Salmon Carcass Tagging (Scotland) Regulations 2016 (2016/116); Tweed Regulation (Salmon Carcass Tagging) Order 2016 (2016/117); Tweed Regulation (Salmon Conservation) Order 2016 (2016/118) from—

Richard Lochhead, Cabinet Secretary for Rural Affairs, Food and Environment, Willie Cowan, Head of Performance, Aquaculture and Recreational Fisheries, Jeff Gibbons, Head of Wild Fisheries, and Stuart Middlemas, Head of Ecology Programme, Scottish Government.

2. **Subordinate legislation:** Alex Fergusson to move—

S4M-15732—That the Rural Affairs, Climate Change and Environment Committee recommends that the Conservation of Salmon (Scotland) Regulations 2016 (SSI 2016/115) be annulled.

3. **Subordinate legislation:** The Committee will consider the following negative instruments—

The Salmon Carcass Tagging (Scotland) Regulations 2016 (2016/116);
Tweed Regulation (Salmon Carcass Tagging) Order 2016 (2016/117);
Tweed Regulation (Salmon Conservation) Order 2016 (2016/118);
Common Agricultural Policy (Direct Payments etc.) (Scotland) Amendment Regulations 2016 (SSI 2016/104).

4. **Public petitions:** The Committee will consider the following petitions—

PE01547 on Conservation of Wild Salmon
PE01490 on Control of Wild Goose Numbers.

5. **Annual report:** The Committee will consider a draft annual report for the parliamentary year from 11 May 2015 to 23 March 2016.
6. **Legacy paper (in private):** The Committee will consider a draft report reflecting on its work during the current session and suggesting priorities for Session 5.

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The papers for this meeting are as follows—

Agenda items 1, 2 and 3

Subordinate legislation cover note	RACCE/S4/16/8/1
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Agenda item 4

Petitions cover note	RACCE/S4/16/8/2
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Agenda item 5

Draft Annual Report 2015-16	RACCE/S4/16/8/3
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Agenda item 6

PRIVATE PAPER	RACCE/S4/16/8/4 (P)
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SSI cover note for:

- **Conservation of Salmon (Scotland) Regulations 2016 (SSI 2016/115)**
- **Salmon Carcass Tagging (Scotland) Regulations 2016 (SSI 2016/116)**
- **Tweed Regulation (Salmon Carcass Tagging) Order 2016 (SSI 2016/117)**
- **Tweed Regulation (Salmon Conservation) Order 2016 (SSI 2016/118)**
- **Common Agricultural Policy (Direct Payments etc.) (Scotland) Amendment Regulations 2016 (SSI 2016/104)**

Procedure for Negative Instruments

1. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

2. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

Recommendation

3. The Committee is invited to consider any issues which it wishes to raise on these instruments.

Delegated Powers and Law Reform Committee

4. At its meeting on 1 March 2016, the Committee considered the following instrument and determined that it did not need to draw the attention of the Parliament to any of the instruments on any grounds within its remit.

5. A copy of the Explanatory Notes and the Policy Notes are included with the papers.

Additional Evidence

6. Additional evidence sent to the Committee on the instruments concerning salmon fishing can be found at **Annexe A**.

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SSI 2016/115

Title of Instrument: Conservation of Salmon (Scotland) Regulations 2016 (SSI 2016/115)

Type of Instrument: Negative

Laid Date: 23 February 2016

Circulated to Members: 4 March 2016

Meeting Date: 9 March 2016

Minister to attend meeting: Yes

Motion for annulment lodged: Yes - S4M-15732

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 21 March 2016

Purpose

These Regulations make provision to regulate the killing of salmon in specified areas. The Scottish Ministers must carry out, or arrange for the carrying out of, an assessment of the conservation status of salmon in those areas described in Schedule 1.

Regulation 3 prohibits the retention of any salmon which are caught in coastal waters and those areas of inland waters described in Schedule 2.

Regulation 4 provides that a conservation plan for salmon may be agreed between the Scottish Ministers and District Salmon Fishery Boards or proprietors of salmon fisheries in respect of those areas described in Schedule 1.

EXPLANATORY NOTE

As per purpose above and including:

These Regulations make provision to regulate the killing of salmon in specified areas. The Scottish Ministers must carry out, or arrange for the carrying out of, an assessment of the conservation status of salmon in those areas described in Schedule 1.

Regulation 3 prohibits the retention of any salmon which are caught in coastal waters and those areas of inland waters described in Schedule 2. In terms of section 38(7) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 it is an offence to act in contravention of the prohibition. Anyone found guilty of the offence is liable, on summary conviction, to a fine of up to level 4 on the standard scale.

Regulation 4 provides that a conservation plan for salmon may be agreed between the Scottish Ministers and District Salmon Fishery Boards or proprietors of salmon fisheries in respect of those areas described in Schedule 1.

A Business Regulatory Impact Assessment in relation to these Regulations has been prepared and placed in the Scottish Parliament Information Centre. Copies of it can be obtained from Marine Scotland, Victoria Quay, Edinburgh EH6 6QQ and online at www.legislation.gov.uk.

POLICY NOTE

Purpose of the Instrument

The Conservation of Salmon (Scotland) Regulations 2016 ('the 2016 Regulations') makes provision for the conservation of salmon in Scotland. A separate instrument, the Tweed Regulation (Salmon Conservation) Order 2016, makes parallel provision for the Tweed district. The purpose of the 2016 Regulations is to ensure that the killing of Atlantic salmon in Scotland will be managed by assessing and categorising specified areas of inland water in relation to their conservation status. The Regulations then prohibit the retention of Atlantic salmon in Scotland out-with inland waters and in specified areas of inland waters. In addition Ministers may agree a conservation plan with the local district salmon fishery board or salmon fishery proprietors.

Legislative Context

Section 38(1) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 ('the 2003 Act') enables the Scottish Ministers to make regulations considered necessary or expedient for the conservation of salmon. In accordance with paragraphs 10, 11, 12 and 14 (1) of schedule 1 to the 2003 Act, the Scottish Ministers have consulted with such persons they considered appropriate and given notice of the general effect of their proposal by way of an advertisement in 3 national newspapers. In accordance with paragraph 12 of schedule 1 to the 2003 Act, Ministers considered 258 representations and objections in relation to the proposal and determined to progress without any alterations to the original proposal regarding the assessment requirements and the prohibition on the retention of salmon. A decision was made to extend the power to agree a conservation plan to all areas of inland water, irrespective of their conservation status.

Policy Background

The report of the independent Wild Fisheries Review (WFR), [published](#) in October 2014, recommended that, in advance of consideration of the broader reform agenda for wild fisheries, Ministers take immediate action to conserve wild Atlantic Salmon by introducing as soon as practicable a ban on killing except under licence.

Salmon is a protected species under the [Habitats Directive](#). In addition, The North Atlantic Salmon Conservation Organisation Fishery (NASCO¹), to which the European Union is a party, provides guidance that makes it clear that fisheries are best managed on a single river stock basis and that action should be taken to reduce the risks posed by any Mixed Stock Fisheries (those fisheries exploiting salmon from more than one river). NASCO has recommended 'that conservation limits and management targets be set for each river and combined as appropriate for the management of different stock groupings defined by managers' and 'that stocks be maintained above conservation limits by means of management targets'.

There is a need to ensure and be seen to be demonstrating that any killing is sustainable. In addition, greater protection and enhancement of stocks will help to maximise the socio-economic benefits that flow from them. Salmon continue to face many pressures in the marine and freshwater environment and the latest Marine Scotland Science stock status [report](#) for 2014 shows a decline in stocks over the last few years

In looking to progress the original recommendation Ministers have looked to ensure that the Regulations are targeted at improving the conservation status of salmon by managing the pressure of exploitation on the weakest stocks within Scotland's domestic waters. The Regulations are designed to complement, not replace, other management activities being undertaken at local, national and international level in the interests of conservation. The approach in the Regulations has moved away from a licensable activity in response to original stakeholders' concerns and instead to one that looks to categorise fishery district in relation to their conservation status.

The Regulations place a statutory duty on the Scottish Ministers to carry out an assessment of the stock levels for salmon in inland waters for the purposes of establishing the conservation status of salmon in defined areas. Where an area of inland waters includes a special area of conservation (a "SAC"), being an area where Atlantic salmon is identified as a species native to a protected habitat under the Habitats Directive. The Scottish Ministers must have regard to the conservation objectives of the SAC when carrying out their assessment. The purpose of the assessment is to determine whether fishing is sustainable in the area in question. The assessment process will entail the collation of information on population levels of salmon in each area based on catch statistics. It is intended that the assessment will be carried out on an annual basis

The assessment will determine the conservation status for each area and SAC. The impact of fishing on the conservation objectives of each SAC and the ecological requirements of Atlantic salmon form part of the wider consideration of the likely significance of the effect netting/angling may have on our designated sites. Where

¹ The Convention for the Conservation of Salmon in the North Atlantic Ocean is a multilateral agreement which came into force on 1st October 1983. Its aim is to promote the conservation, restoration, enhancement and rational management of salmon stocks in the North Atlantic through international co-operation. The EU is one of the contracting parties. One of the measures in the Convention is the prohibition of fishing for salmon outwith the 12 mile zone in coastal States (article 2.2). It also makes general provision regarding the availability, and sharing, of statistics for catch as well as stocks and the provision of scientific data. NASCO, the North Atlantic Salmon Conservation Organisation, is the international organisation established by the Convention.

there is a favourable conservation status for an area or SAC it will be accorded a grade 1 or 2 status. For those areas where there is no favourable conservation status for Atlantic salmon, a grade 3 status will be applied. Those areas listed in Schedule 2 to the Regulations, where retaining salmon is prohibited, are those areas which have been accorded category 3 status.

The Regulations are being progressed in response to growing concerns about Scotland's salmon stocks, the need to more ably demonstrate compliance with EU and international obligations; and the need to take action to ensure that they are protected for the future.

Consultation

Since February 2015, Ministers have conducted a series of linked public [consultations](#) on proposed conservation measures to regulate the killing of wild salmon. This included a consultation around the Strategic Environmental Assessment – Environmental report was undertaken. Marine Scotland officials also participated in a number of drop in sessions coordinated alongside the wild fisheries reform agenda and an online dialogue discussion was conducted for a full week, exploring a number of issues identified during the consultation process and during the discussion forum itself.

Ministers listened to, and acted upon, these concerns and consulted on revised conservation measures while still retaining the fundamental principle that any killing of wild salmon - a protected species – must be sustainable and does not present a threat to vulnerable stocks.

Through the development of the Regulations stakeholder engagement has continued. This has included regular meetings and discussions with the Salmon Net Fishing Association of Scotland and those directly impacted by the prohibition on the killing of Atlantic salmon in Scotland out-with inland waters. The Regulations not only reflect a significant amount of stakeholder consultation and engagement, where every opportunity has been made to enable contributions to the developing proposals, but also acknowledge the role of the management measures already in place across Scotland. That level of stakeholder dialogue will continue as we take forward the Regulations.

Impact and Financial effects

A combined **Business and Regulatory Impact Assessment (BRIA)** has been prepared for these Regulations and The Tweed Regulation (Salmon Conservation) Order 2016.

BUSINESS AND REGULATORY IMPACT ASSESSMENT

Title of Proposal

The Conservation of Salmon (Scotland) Regulations 2016 & The Tweed Regulation (Salmon Conservation) Order 2016

Purpose and intended effect

Background

The Conservation of Salmon (Scotland) Regulations 2016 ('the 2016 Regulations') and The Tweed Regulation (Salmon Conservation) Order 2016 ('the 2016 Order') make provision for the management of exploitation and the conservation of salmon in Scotland. This package of regulatory measures introduces a mandatory catch and release scheme in coastal waters and in specified areas of inland waters by prohibiting the retention of Atlantic salmon. Areas of inland waters are assessed for their conservation status and categorised according to stock levels. The intention is that this assessment will be carried out on an annual basis.

Objective

The package of regulatory measures places a statutory duty on the Scottish Ministers to carry out an assessment of the conservation status of salmon in specified inland waters. Where areas include a Special Area of Conservation (SAC) Ministers must have regard to the conservation objectives for that SAC. The purpose of the assessment is to determine whether fishing is sustainable in the area in question.

As required by the Conservation (Natural Habitats, & c.) Regulation 1994 a Habitats Regulation Appraisal ("HRA") has been undertaken as part of the assessment of the conservation status of all the 109 areas and all SACs.

Rationale for Government intervention

The report of the independent Wild Fisheries Review (WFR), [published](#) in October 2014, recommended that, in advance of consideration of the broader reform agenda for wild fisheries, Ministers take immediate action to conserve wild Atlantic Salmon by introducing as soon as practicable a ban on killing except under licence.

Salmon is a species native to protected habitats under the [Habitats Directive](#). There is a need to ensure that any killing is sustainable. In addition, greater protection and enhancement of stocks will help to maximise the socio-economic benefits that flow from them. Salmon continue to face many pressures in the marine and freshwater environment and the latest Marine Scotland Science stock status [report](#) for 2014 shows a decline in stocks over the last few years.

Consultation

Within Government

Discussions have taken place with Scottish Natural Heritage (SNH), Scottish Environmental Protection Agency (SEPA) and the Crown Office and Procurator Fiscal Service (COPFS) around the development of these Regulations, the Habitats Directive and the enforcement challenges presented by the Fishery Districts.

Public Consultation

Significant public [consultation](#) has taken place since February 2015 around the developing Regulations. These have included an on-line dialogue with stakeholders and attendance at a number of drop in events. The package of regulatory measures reflects feedback and concerns expressed by stakeholders throughout this period. While we did not consult on a partial BRIA much of the earlier feedback was centred around concerns about the financial implication for proprietors and anglers in particular.

Business

Throughout the consultation periods we have engaged with those sectors directly impacted by the measures, most particularly coastal netsmen who are members of the Salmon Net Fishing Association of Scotland and who would be subject to the prohibition on the killing on Salmon outwith estuary waters, and in river commercial netsmen.

Significant engagement has also been undertaken with angling clubs who might be impacted by a category 3 designation, about how they mitigate concerns around a potential reduction in membership.

The vast majority of discussion have taken place with individuals/businesses and MSPs. Details of the engagement undertaken to date is available of the [webpage](#)

Options

Option 1: Do nothing

Under this option Ministers would not be looking to respond to growing concern about Scotland's salmon stocks and would not be addressing concerns expressed by the European Commission about how it is applying the requirements under the Habitats Directive in relation to wild salmon.

Option 2: Place a greater emphasis on local voluntary conservation measures

While local voluntary conservation measures have proved successful - the practice of catch and release is already widely observed in Scotland - 82% of the annual rod catch was released in 2014 –they are by their very nature not consistent across Scotland and do not incorporate any evidence that they relate and/or meet the requirements of the Habitats Directive. In addition, the high nature of catch and release Scotland needs to be seen in the context of continuing concerns around our Salmon stocks and the need to take more proactive action to protect them for now and for future generations.

Article 6(1) of the Habitats Directive requires a Member State to establish necessary conservation measures which correspond to the ecological requirements of the natural habitat types and species which are protected. Such measures must be designed to maintain, or restore, at a favourable conservation status the natural habitats or species protected under the Directive.

Option 3: Introduction of statutory measures to manage the killing of wild salmon in Scotland.

Salmon is a species native to protected sites which are adopted as special areas of conservation under the Habitats Directive, greater protection and enhancement of stocks will help to maximise the socio-economic benefits that flow from them. Salmon continue to face many pressures in the marine and freshwater environment and the latest Marine Scotland Science stock status [report](#) for 2014 shows a decline in stocks over the last few years

Sectors and groups affected

Prohibition on the retention of salmon outside of estuary limits – this will impact on all the coastal netsmen. There are currently around 30 active netting stations across Scotland. Four of those businesses account for 80%+ of the fish killed. The gross value of the net fisheries is around £1m per annum. We currently estimate that around 100 people (mostly on a temporary basis) will be employed either part or full time over a netting season.

Others involved more directly with commercial salmon protects have also expressed concern at the impact on their businesses as a consequence of the prohibition.

Grade 3 categorisation – mandatory catch and release

83 fishery districts and 3 SACS have been designated as category 3 status (mandatory catch and release). They account for less than 20% of the total reported rod

While we do not hold a record of the number of angling clubs (and their membership) in Scotland, some of these clubs have reported a decline in renewal of memberships because of the inability to kill a salmon (but still the ability to fish) and in spite of the current high levels of catch and release across Scotland.

We are also aware that some businesses have reported concerns about the potential impact on the local economy in some anglers chose to stay aware

Benefits

Option 1: Do nothing

While the voluntary conservation measures would continue to be in place, the current concerns around existing salmon stocks and the impacts of mixed stock fisheries would continue and would afford no protection to our special areas of conservation. There would continue to be greater scrutiny from the European Commission about our ability to demonstrate that we are meeting our responsibilities under the Habitats Directive and the extent to which we are applying the principles of NASCO which recommended 'that conservation limits and management targets be set for each river and combined as appropriate for the management of different stock groupings defined by managers' and 'that stocks be maintained above

conservation limits by means of management targets' .

Option 2: Place a greater emphasis on local voluntary conservation measures.

In common with option 2 while this may see an increase in the practice of catch and release, the impacts of mixed stock fisheries would continue unregulated and we would have no direct means to protect our special areas of conservation.

Option 3: Introduction of statutory measures to manage the killing of wild salmon in Scotland.

The package of regulatory measures place a statutory duty on the Scottish Ministers to carry out an assessment on the conservation status of salmon in inland waters in defined areas. Where an area of inland waters includes a special area of conservation (a "SAC"), being an area where Atlantic salmon is identified as a species native to a protected habitat under the Habitats Directive, the Scottish Ministers must have regard to the conservation objectives of the SAC when carrying out their assessment. The purpose of the assessment is to determine whether fishing is sustainable in the area in question. The assessment process will entail the collation of information on population levels of salmon in each area based on catch statistics. It is intended that the assessment will be carried out on an annual basis.

The assessment will determine the conservation status for each area and SAC. The impact of fishing on the conservation objectives of each SAC and the ecological requirements of Atlantic salmon form part of the wider consideration of the likely significance of the effect netting/angling may have on our designated sites. Where there is a favourable conservation status for an area or SAC it will be accorded a grade 1 or 2 status. For those areas where there is no favourable conservation status for Atlantic salmon, a grade 3 status will be applied. Those areas listed in Schedule 2 to the 2016 Regulations, where retaining salmon is prohibited, are those areas which have been accorded category 3 status. The inland waters described in the 2016 Order for the Tweed district have been assessed as categories 1 & 2.

The package of regulatory measures are being progressed in response to growing concerns about Scotland's salmon stocks, the need to more ably demonstrate compliance with EU and international obligations; and the need to take action to ensure that they are protected for the future.

Costs

Option 1: Do nothing

There are no direct financial costs with regard to option 1 albeit the failure to tackle the concerns around salmon stocks could have a significant impact on the wider economy,

Option 2: Place a greater emphasis on local voluntary conservation measures.

There are no direct financial costs associated with option 2.

Option 3: Introduction of statutory measures to manage the killing of wild salmon in Scotland

The measures and most particularly the prohibition on the retention of salmon outwith estuary limits will have significant impact on coastal netting (see sectors and groups affected). Discussions have already begun with these individuals/businesses about potential mitigation./diversification, including their willingness to participate in a number of science projects directly and indirectly related to the conservation measures.

We are also aware of concerns expressed by a number of angling clubs within fishery areas classified as category 3 and who have suggested (and in some cases evidenced) a decline in their membership which they have directly associated with the inability to kill a salmon (even with the high evidence of voluntary catch and release already evidenced in Scotland). While it is not clear whether this decline is part of a wider concern for angling as a sport, Ministers have committed to work with angling clubs to better promote their fisheries going forward.

Scottish Firms Impact Test

We have engaged with representative bodies and individual businesses during the consultation period and specifically sought information on the potential financial impact of the proposed conservation measures. Those affected by the proposal range from small individual netting companies to larger sporting estates. Whilst many respondents highlighted that there would potentially be a financial loss to their business they were unable to quantify the extent or provide any financial information.

From our catch statistics we know that there are currently around 30 active netting stations across Scotland. Four of those businesses account for 80%+ of the fish killed. The gross value of the net fisheries is around £1m per annum. We currently estimate that around 100 people (mostly on a temporary basis) will be employed either part or full time over a netting season.

Competition Assessment

The measures will restrict fishing to a catch and release in many areas of Scotland.

Test run of business forms

No new forms will be introduced

Legal Aid Impact Test

There are no legal aid implications associated with this legislation.

Enforcement, sanctions and monitoring

Enforcement will be through the powers within the Salmon and Freshwater Fisheries

(Consolidation) (Scotland) Act 2003 and The Scotland Act 1998 (River Tweed) Order 2006. Failure to comply with the 2016 Regulations is an offence under section 38(7) of the 2003 Act. Failure to comply with the 2016 Order is an offence under article 54(7) of the 1998 Order. A person who is found guilty of an offence is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

Implementation and delivery plan

The new measures will come into force on 31st March 2016.

- **Post-implementation review**

The impact of the package of regulatory measures and the methodology supporting the categorisation will be reviewed on an annual basis.

Summary and recommendation

In recognition of increasing concerns about salmon stocks and the many pressures that they face there is a need to ensure and be seen to be demonstrating that any killing is sustainable. The package of regulatory measures seek to protect the weakest stocks and introduce catch and release in a number of areas to allow stocks to recover or at the very least maintain them at current levels.

Scottish Ministers may agree a Conservation Plan irrespective of the conservation status with District Salmon Fishery Boards or proprietors under the 2016 Regulations and the River Tweed Commission under the 2016 Order. The purpose of the plan is to complement the application of a conservation status and to inform further management measures and actions that might be considered at a local and national level. It will summarise the options for the conservation, restoration, enhancement and management of wild Atlantic salmon stocks taking into account the best scientific evidence available. The conservation plan will include detail of existing and future local initiatives to address the current assessment of the fishery district; and identify (and where possible quantify) other factors that might have a material impact, such as marine renewable energy, predation, aquaculture and barriers.

SSI 2016/116

Title of Instrument: Salmon Carcass Tagging (Scotland) Regulations 2016 (SSI 2016/116)

Type of Instrument: Negative

Circulated to Members: 4 March 2016

Meeting Date: 9 March 2016

Minister to attend meeting: Yes

Motion for annulment lodged: No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 21 March 2016

Purpose

These Regulations make provision for and in connection with tagging the carcasses of salmon within inland waters in Scotland. The duty to affix a tag to salmon carcasses does not apply to any salmon which is taken in fish farms or where the exemptions at section 27 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 apply. They do not apply where salmon is caught by rod and line and where the salmon is taken in the Lower Esk south of the medium filum under the authority of a licence issued by the Environment Agency.

EXPLANATORY NOTE

As per purpose above and including:

Regulation 4 prescribes the method of tagging and the time by which the carcass must be tagged.

Regulations 5 and 6 prescribe the nature and form of, and the information to be contained in, salmon tags. Tags are supplied and issued by the Scottish Ministers (regulation 8) and cannot be removed from a salmon carcass except in the circumstances prescribed in regulation 7(2).

Persons who are under a duty to tag salmon carcasses must keep a record in accordance with regulation 9. The record must be submitted to the Scottish Ministers within the period of 2 weeks from the date of the start of the annual close time for the salmon fishery district, or part of a salmon fishery district, within which the salmon was taken (regulation 9(2)).

These Regulations were notified in draft to the European Commission in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council (OJ L

241, 17.9.2015, p.1) which lays down a procedure for the provision of information in the field of technical regulations and rules on Information Society services.

A Business and Regulatory Impact Assessment in relation to these Regulations has been prepared and placed in the Scottish Parliament Information Centre. Copies of it can be obtained from Marine Scotland, Victoria Quay, Leith, Edinburgh EH6 6QQ and online at www.legislation.gov.uk.

POLICY NOTE

Purpose of the Instrument

The Salmon Carcass Tagging (Scotland) Regulations 2016 ('the Regulations') make provision for and in connection with tagging the carcasses of salmon within inland waters in Scotland. The 2016 Carcass Tagging Regulations require that any salmon caught in inland waters, other than by rod and line, will be tagged. The Regulations also make provision regarding the nature and form of the tags and for record keeping.

Legislative Context

Section 21A of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 ('the 2003 Act') (introduced by the Aquaculture and fisheries (Scotland) Act 2013) enables the Scottish Ministers to make regulations for or in connection with tagging the carcasses of salmon.

Policy Background

During the passage of the Aquaculture and Fisheries (Scotland) Act 2013 there was broad support from stakeholders for the introduction of a carcass tagging scheme.

The report of the independent Wild Fisheries Review (WFR), <http://www.gov.scot/Resource/0046/00460195.pdf> published in October 2014, recommended that, in advance of consideration of the broader reform agenda for wild fisheries, Ministers take immediate action to conserve wild Atlantic Salmon by introducing as soon as practicable a ban on killing except under licence. The introduction of a carcass tagging scheme was part of the proposals.

The Conservation of Salmon (Scotland) Regulations 2016 are being laid along with the Regulations. The approach in the Conservation Regulations make provision requiring assessments to be made for specified areas of inland waters which will then be categorised according to their conservation status. For those areas where stock levels are low, there is a prohibition on retaining Atlantic salmon. There is also a prohibition on retaining salmon caught in coastal waters. The effect is that the tagging regime will apply only to salmon caught in-river (above estuary limits).

These Regulations are being made in order to diminish the availability of illegally caught wild salmon to the commercial market; protect companies legitimately operating in a commercial market and improve statistical data and provide a further layer of audit to the catch data currently provided to Marine Scotland.

Consultation

Since February 2015, Ministers have conducted a series of linked public consultations on proposed conservation measures to regulate the killing of wild salmon including a carcass tagging scheme

<http://www.gov.scot/Topics/marine/Salmon-Trout-Coarse/fishreform/licence/documents>.

This included a consultation around the Strategic Environmental Assessment – Environmental report was undertaken. Marine Scotland officials also participated in a number of drop in sessions coordinated alongside the wild fisheries reform agenda and an online dialogue discussion was conducted for a full week, exploring a number of issues identified during the consultation process (including carcass tagging) and during the discussion forum itself. These Regulations were notified to the European Commission under the Technical Standards Directive (EU) 2015/1535 (replacing Directive 98/34/EU). The Regulations make provision regarding the nature and form of a salmon tag which are technical requirements and technical standards under the Directive.

Ministers listened to, and acted upon, these concerns and consulted on revised conservation measures including carcass tagging while still retaining the fundamental principle that any killing of wild salmon - a protected species – must be sustainable and does not present a threat to vulnerable stocks. In particular the

Impact and Financial effects

A separate **Business and Regulatory Impact Assessment (BRIA)** has been prepared for these Regulations.

BUSINESS AND REGULATORY IMPACT ASSESSMENT

<p>Title of Proposal</p> <p>The Salmon Carcass Tagging (Scotland) Regulations 2016</p>
<p>Purpose and intended effect</p> <ul style="list-style-type: none"> <p>Background</p> <p>The purpose of this legislation is to progress the powers conferred by section 21A of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (introduced by the Aquaculture and Fisheries (Scotland) Act 2013), to create a statutory carcass tagging scheme in Scotland.</p> <p>Objective</p> <p>The policy intention is to :</p>

- diminish the availability of illegally caught wild salmon to the commercial market through the introduction of a mandatory uniquely numbered carcass tagging scheme.
- protect those companies operating legitimately in a commercial market.
- improve statistical data and to provide an additional layer of audit to the catch data currently provided to Marine Scotland.

- **Rationale for Government intervention**

Building on the success of the voluntary scheme currently in operation by members of the Salmon Net Fishing Association of Scotland (SNFAS), to place on a statutory basis the need for the tagging of wild salmon caught in Scotland which is to be sold or offered for sale. This will make it clear that any untagged fish would not be marketable and that any untagged fish being made available for sale had been illegally taken. While it is already an offence to sell or attempt to sell fish caught by rod and line in Scotland, this measure will provide a further disincentive for those who look to work around the existing legal framework.

Consultation

- **Within Government**

As part of the detailed consultation undertaken in late 2012/early 2013 that informed the development of the Aquaculture and Fisheries (Scotland) Act 2013 and also throughout the Scottish Parliament's detailed consideration of the draft provisions, a significant amount of public engagement and consultation took place around the introduction and benefits of a carcass tagging scheme, as well as the impact of the schemes currently in operation in other parts of the UK.

Over the past 9 months the Scottish Government has conducted a series of [linked consultations](#) specifically around licensing proposals for the killing of wild salmon, a component of which would be a carcass tagging scheme.

These consultations identified a range of key stakeholder concerns; perhaps the most common theme has been the request for a straightforward, clear and consistent system which can be effectively managed with minimal additional bureaucracy and cost. Scottish Ministers have listened to, and acted upon, these concerns while still retaining the fundamental principle that any killing of wild salmon - a protected species – is sustainable and does not present a threat to vulnerable stocks. -

<http://www.gov.scot/Topics/marine/Salmon-Trout-Coarse/fishreform/licence>

[Following the conclusion of the 28 day consultation period on the advertised revised proposals on 1 October 2015 and analysis of responses Ministers announced their intention to proceed with the Salmon](#)

[Carcass Tagging Regulations and the proposal taken forward under the Conservation of Salmon \(Scotland\) Regulations 2016 to prohibit the retention of Atlantic salmon in coastal waters and specified areas of inland water.](#)

Public Consultation

See above. During the passage of the Bill there was broad support among wild fisheries stakeholders for a carcass tagging scheme although opinion was often divided over how the scheme should operate and for what purpose. As a consequence, the provisions were drafted in such a way as to provide flexibility for Ministers to determine the detail of the scheme through secondary legislation.

- **Business**

The prohibition on retaining Atlantic salmon caught within coastal waters as provided for in the Conservation of Salmon (Scotland) Regulations 2016 means that the proposed carcass tagging scheme is particular to in-river commercial netting activities (above estuary limits) under the new framework and as such is arguably only relevant to a narrow and very specific group of stakeholders, all of whom have, as previously noted, contributed indirectly and directly to the development of the Consultation papers, the draft Scottish statutory Instrument and the draft Regulatory Impact Assessment. Discussions continue with those who would be impacted by the introduction of the legislation, and those who would have responsibility for enforcement. In addition, discussions have taken place with the main representative bodies - the Salmon Net Fishing Association of Scotland (SNFAS) and the Association of Salmon Fishery Boards (ASFB)

Options

Option 1: Do Nothing

Under this option, Ministers would not be progressing the powers secured during the passage of the Aquaculture and Fisheries (Scotland) Act 2013. It is anticipated that the existing voluntary scheme would have continued to remain in operation if the scheme were not introduced.

Option 2: A Scotland wide unnumbered carcass tagging scheme for all wild salmon caught in Scotland for the purpose of selling.

This would have, to all intent and purposes, placed the existing voluntary scheme currently operated by around 90% of nets-men in Scotland and the Tweed district on a statutory basis. While that would have looked to encompass all wild salmon caught in Scotland for the purpose of selling, it is likely that those nets-men not currently operating the scheme are also not working on a commercial basis.

Option 3: A Scotland wide numbered carcass tagging scheme (with the identifiable salmon fishery) for all wild salmon caught in Scotland for the

purpose of selling.

With the same basis for option two, but with the added benefit of a tag with a unique number and the name of the salmon fishery which must remain attached until the fish is processed, thus meeting and fulfilling the three identified policy objectives.

- **Sectors and groups affected**

All those who fish for wild salmon, other than by rod and line, in Scotland.

- **Benefits**

Option 1: Do Nothing

With no change, the current voluntary scheme would have continued to be in place and in operation, while the concerns around illegally caught salmon being made available on a commercial basis would continue to be addressed through existing enforcement powers. This would likely raise concerns from the Rural Affairs and Climate Change Committee and from a number of stakeholders both of whom made significant comments on the shape and focus of any scheme being developed. It would also question the original motivation for the powers to be included within the Act . Moreover there remains a perception that a significant number of illegally caught salmon are entering the commercial market through a variety of sources and that in response the Scottish Government will take appropriate additional action for the benefit of legitimate industry, the seller and the consumer

Option 2: A Scotland wide unnumbered carcass tagging scheme for all wild salmon caught in Scotland for the purpose of selling.

The current voluntary scheme has been designed to augment the commercial value of legally wild caught salmon by providing the provenance of the catch, both in terms of country and fishery. However it does not look at present to address the availability of illegally caught salmon to the commercial market which looks to undermine the quality and commerciality of legally caught salmon. It is already illegal to sell a salmon caught by rod and line or to be in possession of salmon and believe (or in circumstances where it would be reasonable to believe) that an offence had been committed. This could apply in the context of a potential consumer or a nets-men with direct access to the commercial market.

Placing the voluntary unnumbered carcass tagging scheme on a statutory basis would have demonstrable added value to the existing voluntary tagging schemes operating in Scotland and the Tweed district. However it would not go so far as to enable the clearer and concise rationalisation of catch statistics with the number of fish that currently make their way to market.

Option 3

Building on option 2 the addition of a numbered tag on the fish would help to

address the problem of illegal taking of salmon above estuary limits which is an acknowledged threat to the conservation and management of Atlantic salmon. It would also act as a further deterrent on the back of existing legislation for anyone who might be looking to push illegally caught wild salmon through the commercial market. Moreover those covered by the scheme would need to maintain records which would need to be rationalised with end year catch statistics provided to Marine Scotland. Such a process will address any perceptions that illegally caught salmon can be and in some instances are being processed through legitimate commercial companies. The addition of a unique identification number has some potential additional commercial value, provides increased confidence with the seller and purchaser, and proves the authenticity of the product.

- **Costs**

Option 1

There are no financial costs with regard to option 1. However Ministers have made a commitment that a scheme would be in place for the 2016 season.

Option 2

There are no financial costs associated with Option 2. Any costs associated with the production of the tags and the detail required (with the fishery clearly identified) and the central administration would be met by the Scottish Government. It is estimated that the total cost for the production of the tags would be in the region of £1200 pounds (2400 fish x 50p – figures from 2014 catch stats). There is no intention to recoup the costs from the industry.

Option 3

As with two but with the addition of the unique number.

Every effort is being made to reconcile the record keeping requirements of the carcass tagging scheme with the existing legislative requirements to collect salmon and sea trout fishery statistics and where possible the purpose of the powers available through the Conservation of Salmon (Collection of Statistics) (Scotland) Regulations 2006 which some District Salmon Fishery Boards have applied to collect data on a number of species. At this stage, the anticipated additional resource costs to the businesses associated with the placing of uniquely numbered tags and associated record keeping are considered to be low.

It is not anticipated that any additional labour costs incurred would be passed on to the consumer.

Scottish Firms Impact Test

Detail the results of your face-to-face interviews.*

<p>Association of Salmon Fishery Boards</p> <p>The Salmon Net Fishing Association of Scotland</p> <ul style="list-style-type: none"> • Competition Assessment Detail the results of your competition assessment* • Test run of business forms How are you going to test run any new business forms?*
<p>Legal Aid Impact Test</p> <p>There are no legal aid implications associated with this legislation.</p>
<p>Enforcement, sanctions and monitoring</p> <p>Enforcement will be through the powers in the 2003 Act. The requirement to maintain and submit records will contribute towards ascertaining whether the regulations are being complied with. Failure to comply with the regulations is an offence under section 21A(4) of the 2003 Act. A person who is found guilty of such an offence is liable, on summary conviction, of a fine up to level 4 on the standard scale.</p>
<p>Implementation and delivery plan</p> <p>The Regulations will come into force on 31st March 2016, providing a sufficient lead in time for the production of the tags, and to ensure the appropriate administrative procedures have been put in place.</p> <ul style="list-style-type: none"> • Post-implementation review <p>It is envisaged that the scheme will be reviewed on an annual basis.</p>
<p>Summary and recommendation</p> <p>In summary the progression to a statutory numbered carcass tagging scheme.</p> <ul style="list-style-type: none"> • Summary costs and benefits table Table outlining costs & benefits of each option considered*

SSI 2016/117

Title of Instrument: Tweed Regulation (Salmon Carcass Tagging)
Order 2016 (SSI 2016/117)

Type of Instrument: Negative

Laid Date: 23 February 2016

Circulated to Members: 4 March 2016

Meeting Date: 9 March 2016

Minister to attend meeting: Yes

Motion for annulment lodged: No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? No

Purpose

This Order makes provision for and in connection with tagging the carcasses of salmon within inland waters in Scotland. The duty to affix a tag to salmon carcasses does not apply to any salmon which is taken by rod and line, in fish farms or where the exemptions at article 48 of the Scotland Act (River Tweed) Order 2006 apply.

EXPLANATORY NOTE

As per purpose above and including:

Article 4 prescribes the method of tagging and the time by which the carcass must be tagged.

Articles 5 and 6 prescribe the nature and form of, and the information to be contained in, salmon tags. Tags are supplied and issued by the Scottish Ministers (article 8) and cannot be removed from a salmon carcass except in the circumstances prescribed in article 7(2).

Persons who are under a duty to tag salmon carcasses must keep a record in accordance with article 9. The record must be submitted to the Scottish Ministers within the period of 2 weeks from the date of the start of the annual close time for the Tweed district (article 9(2)).

This Order notified in draft to the European Commission in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council (OJ L 241, 17.9.2015, p.1) which lays down a procedure for the provision of information in the field of technical regulations and rules on Information Society services.

A Business and Regulatory Impact Assessment in relation to this Order has been prepared and placed in the Scottish Parliament Information Centre. Copies of it can be obtained from Marine Scotland, Victoria Quay, Leith, Edinburgh EH6 6QQ and online at www.legislation.gov.uk.

POLICY NOTE

Purpose of the Instrument

The Tweed Regulation (Salmon Carcass Tagging) Order 2016 ('the 2016 Tweed Order') makes provision for and in connection with the tagging of salmon within the Tweed district. The Order requires that Atlantic salmon caught within the Tweed District (other than by rod and line) must be tagged. The Order also makes provision regarding the nature and form of the tags, how those must be affixed and requirements as to record keeping.

Legislative Context

Article 43A(1), (2) and (3)(a) of the Scotland Act 1998 (River Tweed) Order 2006 enables the Scottish Ministers to make provision, by order, for or in connection with tagging the carcasses of salmon. Article 43A was introduced by the Scotland Act 1998 (River Tweed) Amendment Order 2015 to introduce a power to create a tagging scheme to mirror section 21A of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 ("the 2003 Act").

Policy Background

The creation of a tagging scheme for salmon was discussed and debated in during the passage of the Aquaculture and Fisheries (Scotland) Act 2013 which included a power to create a scheme for the rest of Scotland (section 21A of the 2003 Act). At that time there was broad support from stakeholders for the introduction of a carcass tagging scheme. The River Tweed commission were consulted on a possible carcass tagging scheme and were supportive.

The report of the independent Wild Fisheries Review (WFR), <http://www.gov.scot/Resource/0046/00460195.pdf> published in October 2014, recommended that, in advance of consideration of the broader reform agenda for wild fisheries, Ministers take immediate action to conserve wild Atlantic Salmon by introducing as soon as practicable a ban on killing except under licence. The introduction of a carcass tagging scheme was part of the proposals.

The Conservation of Salmon (Scotland) Regulations 2016 (the Conservation Regulations) and the Tweed Regulation (Salmon Conservation) Order 2016 ("the Conservation Order") are being laid along with this Order and the Salmon Carcass Tagging (Scotland) Regulations 2016. The Conservation Regulations and the Conservation Order make provision to require assessments of separate areas of inland waters which will then be categorised according to their conservation status. In addition they prohibit the retention of Atlantic salmon caught in coastal waters. This effectively means that the 2016 Tweed Order will apply only to salmon caught in-river (above estuary limits) within the Tweed district.

The Salmon Carcass Tagging (Scotland) Regulations 2016 which cover Scotland are being laid with this Order.

This Order is being made in order to diminish the availability of illegally caught wild salmon to the commercial market; protect companies legitimately operating in a commercial market and improve statistical data and provide a further layer of audit to the catch data currently provided to Marine Scotland. The provisions within the Order mirror the provisions within the Salmon Carcass Tagging Regulations (Scotland) Regulations 2016.

Consultation

Since February 2015, Ministers have conducted a series of linked public consultations on proposed conservation measures to regulate the killing of wild salmon including a carcass tagging scheme

<http://www.gov.scot/Topics/marine/Salmon-Trout-Coarse/fishreform/licence/documents>

This included a consultation around the Strategic Environmental Assessment – Environmental report was undertaken. Marine Scotland officials also participated in a number of drop in sessions coordinated alongside the wild fisheries reform agenda and an online dialogue discussion was conducted for a full week, exploring a number of issues identified during the consultation process (including carcass tagging) and during the discussion forum itself. The Order was notified to the European Commission under the Technical Standards Directive (EU) 2015/1535 (replacing Directive 98/34/EU). The Order makes provision regarding the nature and form of a salmon tag which are technical requirements and technical standards under the Directive.

Ministers listened to, and acted upon, these concerns and consulted on revised conservation measures including carcass tagging while still retaining the fundamental principle that any killing of wild salmon - a protected species – must be sustainable and does not present a threat to vulnerable stocks. Discussions took place with the River Tweed Commission as part of the wider consultation process in respect of the Conservation Regulations.

Impact and Financial effects

A separate **Business and Regulatory Impact Assessment (BRIA)** has been prepared for these Regulations.

BUSINESS AND REGULATORY IMPACT ASSESSMENT

Title of Proposal

The Tweed Regulation (Salmon Carcass Tagging) Order 2016.

Purpose and intended effect

- **Background**

The purpose of this legislation is to progress the powers conferred by article 43A of The Scotland Act 1998 (River Tweed) Order 2006 to create a statutory carcass tagging scheme in the Tweed district (introduced by The Scotland Act 1998 (River Tweed) Amendment Order 2015).

- **Objective**

The policy intention is to :

- diminish the availability of illegally caught wild salmon to the commercial market through the introduction of a mandatory uniquely numbered carcass tagging scheme.
- protect those companies operating legitimately in a commercial market.
- improve statistical data and to provide an additional layer of audit to the catch data currently provided to Marine Scotland.

- **Rationale for Government intervention**

Building on the success of the voluntary scheme currently in operation by members of the Salmon Net Fishing Association of Scotland (SNFAS), to place on a statutory basis the need for the tagging of wild salmon caught in Scotland which is to be sold or offered for sale. This will make it clear that any untagged fish would not be marketable and that any untagged fish being made available for sale had been illegally taken. While it is already an offence to sell or attempt to sell fish caught by rod and line in the Tweed district, this measure will provide a further disincentive for those who look to work around the existing legal framework.

Consultation

- **Within Government**

As part of the detailed consultation undertaken in late 2012/early 2013 that informed the development of the Aquaculture and Fisheries (Scotland) Act 2013 and also throughout the Scottish Parliament's detailed consideration of the introduction of the parallel power for the Tweed district in the Scotland Act 1998 (River Tweed) Amendment Order 2015, a significant amount of public engagement and consultation had taken place around the introduction and benefits of a carcass tagging scheme, as well as the impact of the schemes currently in operation in other parts of the UK.

Over the past 6 months the Scottish Government has conducted a series of [linked consultations](#) ,which included the Tweed district, specifically around licensing proposals for the killing of wild salmon, a component of which would be a carcass tagging scheme.

These consultations identified a range of key stakeholder concerns; perhaps the most common theme has been the request for a straightforward, clear and consistent system which can be effectively managed with minimal additional bureaucracy and cost. Scottish Ministers have listened to, and acted upon, these concerns while still retaining the fundamental principle that any killing of wild salmon - a protected species – must be sustainable and should not present a threat to vulnerable stocks. - <http://www.gov.scot/Topics/marine/Salmon-Trout-Coarse/fishreform/licence>

[Following the conclusion of the 28 day consultation period on the advertised revised proposals on 1 October 2015 and analysis of responses Minister's announced their intention to proceed the introduction of a carcass tagging scheme for the Tweed district and new conservation measures to prohibit the retention of Atlantic salmon caught in coastal waters \(to be introduced by the Tweed Regulation \(Salmon Conservation\) Order 2016\).](#)

Public Consultation

- See above. During the passage of the Bill there was broad support among wild fisheries stakeholders for a carcass tagging scheme although opinion was often divided over how the scheme should operate and for what purpose. As a consequence, the provisions were drafted in such a way as to provide flexibility for Ministers to determine the detail of the scheme through secondary legislation. Parallel powers were then introduced for the Tweed district by way of an amendment to the Scotland Act 1998 (River Tweed) Order 2006.
- The Scotland Act 1998 (River Tweed) Amendment Order 2015 was debated and then approved by resolution of both Houses of Parliament and of the Scottish Parliament.
- The Tweed Regulations (Salmon Carcass Tagging) Order 2016 were notified to the European commission under the Technical Standards Directive (EU) 2015/1535 (replacing Directive 98/34/EU). The Regulations make provision regarding the nature and form of a salmon tag which are technical requirements and technical standards under the Directive.

Business

The Tweed Regulation (Salmon Conservation) Order 2016 will prohibit the retention of Atlantic salmon which is caught in coastal waters. This means that the proposed carcass tagging scheme is particular to commercial netting activities in-river and as such is arguably only relevant to a narrow and very specific group of stakeholders (very small in number) all of whom have, as previously noted, contributed indirectly and directly to the development of the Consultation papers, the draft Scottish statutory Instrument and the draft Regulatory Impact Assessment. Discussions continue with those who would be impacted by the introduction of the legislation, and those who would have responsibility for enforcement. In addition, discussions have taken place with the main representative bodies

- the Salmon Net Fishing Association of Scotland (SNFAS) and the Association of Salmon Fishery Boards (ASFB) and the River Tweed Commission.

Options

Option 1: Do Nothing

Under this option, Ministers would not be progressing the powers under the Scotland Act 1998 (River Tweed) Amendment Order 2015. It is anticipated that the existing voluntary tagging scheme for net caught fish would continue to remain in operation if the scheme was not introduced.

Option 2: An unnumbered carcass tagging scheme for all wild salmon caught in the Tweed District for the purpose of selling.

This would in all intent and purposes place the existing voluntary scheme currently operated by some nets-men in the Tweed District on a statutory basis. While that would look to encompass all wild salmon caught in the Tweed district for the purpose of selling, it is likely that those nets-men not currently operating the scheme are also not working on a commercial basis.

Option 3: A numbered carcass tagging scheme (with the identifiable salmon fishery) for all wild salmon caught in the Tweed District for the purpose of selling.

With the same basis for option two, but with the added benefit of a tag with a unique number and the name of the salmon fishery which must remain attached until the fish is processed, thus meeting and fulfilling the three identified policy objectives.

- **Sectors and groups affected**

All those who fish for wild salmon, other than by rod and line, in the Tweed district.

- **Benefits**

Option 1: Do Nothing

With no change, the current voluntary scheme would continue to be in place and in operation, while the concerns around illegally caught salmon being made available on a commercial basis would continue to be addressed through existing enforcement powers. This would likely raise concerns from the Rural Affairs and Climate Change Committee and from a number of stakeholders. There remains a perception that a significant number of illegally caught salmon are entering the commercial market through a variety of sources and that in response the Scottish Government will take appropriate additional action for the benefit of legitimate industry, the seller and the consumer

Option 2: A Tweed district unnumbered carcass tagging scheme for all wild salmon caught for the purpose of selling.

The current voluntary scheme has been designed to augment the commercial value of legally wild caught salmon by providing the provenance of the catch, in terms of the fishery. However it does not look at present to address the availability of illegally caught salmon to the commercial market which looks to undermine the quality and commerciality of legally caught salmon. It is already illegal to sell a salmon caught by rod and line or to be in possession of salmon and believe (or in circumstances where it would be reasonable to believe) that an offence had been committed. This could apply in the context of a potential consumer or a netsmen with direct access to the commercial market.

Placing the voluntary unnumbered carcass tagging scheme on a statutory basis would have demonstrable added value to the existing voluntary tagging schemes operating in Scotland and the Tweed district. However it would not go so far as to enable the clearer and concise rationalisation of catch statistics with the number of fish that currently make their way to market.

Option 3

Building on option 2 the addition of a numbered tag on the fish would help to address the problem of illegal taking of salmon within rivers and estuaries which is an acknowledged threat to the conservation and management of Atlantic salmon. It would also act as a further deterrent on the back of existing legislation for anyone who might be looking to push illegally caught wild salmon through the commercial market. Moreover those covered by the scheme would need to maintain records which would need to be rationalised with end year catch statistics provided to Marine Scotland. Such a process will address any perceptions that illegally caught salmon can be and in some instances are being processed through legitimate commercial companies. The addition of a unique identification number has some potential additional commercial value, provides increased confidence with the seller and purchaser, and proves the authenticity of the product.

- **Costs**

Option 1

There are no financial costs with regard to option 1. However Ministers have made a commitment that a scheme would be in place for the 2016 season and a draft SSI would be presented to the Scottish Parliament in time for the start of the season.

Option 2

There are no financial costs associated with Option 2. Any costs associated with the production of the tags and the detail required (with the fishery clearly identified) and the central administration would be met by the Scottish Government.. It is estimated that the total cost for the

<p>production of the tags would be in the region of £1000 (cost of tag estimated at 50p x 2000 fish. 2014 catch stats = 2001 salmon and grilse for net and coble). There is no intention to recoup the costs from the industry.</p> <p>Option 3</p> <p>As with two but with the addition of the unique number.</p> <p>Every effort is being made to reconcile the record keeping requirements of the carcass tagging scheme with the existing legislative requirements to collect salmon and sea trout fishery statistics and where possible the purpose of the powers available through article 21(a) of the Scotland Act 1998 (River Tweed) Order 2006 which the River Tweed Commission have applied to collect data on a number of species. At this stage, the anticipated additional resource costs to the businesses associated with the placing of uniquely numbered tags and associated record keeping are considered to be low.</p> <p>It is not anticipated that any additional labour costs incurred would be passed on to the consumer.</p>
<p>Scottish Firms Impact Test</p> <p>Association of Salmon Fishery Boards</p> <p>The Salmon Net Fishing Association of Scotland</p> <p>The River Tweed Commission</p>
<p>Legal Aid Impact Test</p> <p>There are no legal aid implications associated with this legislation.</p>
<p>Enforcement, sanctions and monitoring</p> <p>Enforcement will be through the powers in the Scotland Act 1998 (River Tweed) Order 2006. This SSI includes a requirement to submit the records required to be maintained. This will contribute towards ascertaining whether the Order is being complied with. Failure to comply with the Order is an offence under article 43A(4) of the 2006 Order and a person, if found guilty, may be liable to a fine of up to level 4 on the standard scale on summary conviction.</p>
<p>Implementation and delivery plan</p> <p>The Order will come into force on 31st March 2016, providing a sufficient lead in time for the production of the tags, and to ensure the appropriate administrative procedures have been put in place.</p> <ul style="list-style-type: none"> • Post-implementation review

It is envisaged that the scheme will be reviewed on an annual basis.

Summary and recommendation

In summary the progression to a statutory numbered carcass tagging scheme.

- **Summary costs and benefits table**

Table outlining costs & benefits of each option considered*

SSI 2016/118

Title of Instrument: Tweed Regulation (Salmon Conservation) Order 2016 (SSI 2016/118)

Type of Instrument: Negative

Laid Date: 23 February 2016

Circulated to Members: 4 March 2016

Meeting Date: 9 March 2016

Minister to attend meeting: Yes

Motion for annulment lodged: No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 21 March 2016

Purpose

This Order makes provision to regulate the taking of salmon in the Tweed district. The Tweed district is defined in article 2 of the Scotland Act 1998 (River Tweed) Order 2006 ("the 2006 Order"). This Order places the Scottish Ministers under a duty to make, or make arrangements for, an assessment of the conservation status of salmon in the areas within the district described in article 2(1). Article 4 provides that the Scottish Ministers may agree a conservation plan with the River Tweed Commission.

EXPLANATORY NOTE

As per purpose above and including:

Article 3 prohibits the retention of Atlantic salmon in coastal waters. By virtue of article 54(7) of the 2006 Order failure to comply with that prohibition is an offence. Any person found guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

A Business and Regulatory Impact Assessment in relation to this Order has been prepared and placed in the Scottish Parliament Information Centre. Copies of it can be obtained from Marine Scotland, Victoria Quay, Leith, Edinburgh EH6 6QQ and online at www.legislation.gov.uk.

POLICY NOTE

Purpose of the Instrument

The Tweed Regulation (Salmon Conservation) Order 2016 ('the 2016 Order') makes provision for the conservation of salmon in the Tweed district. A separate instrument, The Conservation of Salmon (Scotland) Regulations 2016, makes parallel provision for the rest of Scotland. The purpose of the 2016 Order is to ensure that the killing of Atlantic salmon in the Tweed district will be managed by assessing and categorising specified areas of inland water in relation to their conservation status. The Order then prohibits the retention of Atlantic salmon in Scotland out-with inland waters. In addition Ministers may agree a conservation plan with the River Tweed Commission.

Legislative Context

Article 54(1) of the Scotland Act 1998 (River Tweed) Order 2006 ('the 2006 Order') enables the Scottish Ministers to make an Order considered necessary or expedient for the conservation of salmon. In accordance with paragraphs 8, 9, 10 and 12 (1) of Schedule 2 to the 2006 Order, the Scottish Ministers have consulted with such persons they considered appropriate and given notice of the general effect of their proposal by way of an advertisement in 3 local newspapers. In accordance with paragraph 10 of Schedule 2 to the 2006 Order, Ministers considered 6 representations and objections in relation to the proposal and determined to progress without any alterations to the original proposal regarding the assessment requirements and the prohibition on the retention of salmon. A decision was made to extend the power to agree a conservation plan to all areas of inland water, irrespective of their conservation status.

Policy Background

The report of the independent Wild Fisheries Review (WFR), [published](#) in October 2014, recommended that, in advance of consideration of the broader reform agenda for wild fisheries, Ministers take immediate action to conserve wild Atlantic Salmon by introducing as soon as practicable a ban on killing except under licence.

Salmon is a protected species under the [Habitats Directive](#). In addition, The North Atlantic Salmon Conservation Organisation Fishery (NASCO ²), to which the European Union is a party, provides guidance that makes it clear that fisheries are best managed on a single river stock basis and that action should be taken to reduce the risks posed by any Mixed Stock Fisheries (those fisheries exploiting salmon from more than one river). NASCO has recommended 'that conservation limits and

² The Convention for the Conservation of Salmon in the North Atlantic Ocean is a multilateral agreement which came into force on 1st October 1983. Its aim is to promote the conservation, restoration, enhancement and rational management of salmon stocks in the North Atlantic through international co-operation. The EU is one of the contracting parties. One of the measures in the Convention is the prohibition of fishing for salmon outwith the 12 mile zone in coastal States (article 2.2). It also makes general provision regarding the availability, and sharing, of statistics for catch as well as stocks and the provision of scientific data. NASCO, the North Atlantic Salmon Conservation Organisation, is the international organisation established by the Convention.

management targets be set for each river and combined as appropriate for the management of different stock groupings defined by managers' and 'that stocks be maintained above conservation limits by means of management targets' .

There is a need to ensure and be seen to be demonstrating that any killing is sustainable. In addition, greater protection and enhancement of stocks will help to maximise the socio-economic benefits that flow from them. Salmon continue to face many pressures in the marine and freshwater environment and the latest Marine Scotland Science stock status [report](#) for 2014 shows a decline in stocks over the last few years

In looking to progress the original recommendation Ministers have looked to ensure that the Order and separate Regulations are targeted at improving the conservation status of salmon by managing the pressure of exploitation on the weakest stocks within Scotland's domestic waters. The Order is designed to complement, not replace, other management activities being undertaken at local, national and international level in the interests of conservation. The approach in the Order has moved away from a licensable activity in response to original stakeholders' concerns and instead to one that looks to categorise fishery areas in relation to their conservation status.

The Order places a statutory duty on the Scottish Ministers to carry out an assessment of the stock levels for salmon in inland waters for the purposes of establishing the conservation status of salmon in defined areas. The inland waters within the Tweed district include a special area of conservation (a "SAC"), being an area where Atlantic salmon is identified as a species native to a protected habitat under the Habitats Directive. The Scottish Ministers must therefore have regard to the conservation objectives of the SAC when carrying out their assessment. The purpose of the assessment is to determine whether fishing is sustainable in the area in question. The assessment process will entail the collation of information on population levels of salmon in each area based on catch statistics. It is intended that the assessment will be carried out on an annual basis.

The assessment will determine the conservation status for each area of inland waters including the SAC. The impact of fishing on the conservation objectives of the SAC and the ecological requirements of Atlantic salmon form part of the wider consideration of the likely significance of the effect netting/angling may have on our designated sites. Where there is a favourable conservation status for an area or SAC it will be accorded a grade 1 or 2 status. For those areas where there is no favourable conservation status for Atlantic salmon, a grade 3 status will be applied.

The Order is being progressed in response to growing concerns about Scotland's salmon stocks, the need to more ably demonstrate compliance with EU and international obligations; and the need to take action to ensure that they are protected for the future.

Consultation

Since February 2015, Ministers have conducted a series of linked public [consultations](#) on proposed conservation measures to regulate the killing of wild

salmon This included a consultation around the Strategic Environmental Assessment – Environmental report was undertaken. Marine Scotland officials also participated in a number of drop in sessions coordinated alongside the wild fisheries reform agenda and an online dialogue discussion was conducted for a full week, exploring a number of issues identified during the consultation process and during the discussion forum itself.

Ministers listened to, and acted upon, these concerns and consulted on revised conservation measures while still retaining the fundamental principle that any killing of wild salmon - a protected species – must be sustainable and does not present a threat to vulnerable stocks.

Through the development of the Order stakeholder engagement has continued. This has included regular meetings and discussions with representatives of the River Tweed Commission and those directly impacted by the prohibition on the killing of Atlantic salmon in Scotland out-with inland waters. The Order not only reflects a significant amount of stakeholder consultation and engagement, where every opportunity has been made to enable contributions to the developing proposals, but also acknowledge the role of the management measures already in place within the Tweed district. That level of stakeholder dialogue will continue as we take forward the Order.

Impact and Financial effects

A combined **Business and Regulatory Impact Assessment (BRIA)** has been prepared for the Order and The Conservation of Salmon (Scotland) Regulations 2016.

BUSINESS AND REGULATORY IMPACT ASSESSMENT

Combined with SSI (2016/115) – please see above.

Annexe A - Additional Evidence

Written Submission from Barry Turner

Dear member of the Rural Affairs, Climate Change and Environment Committee,

I am writing to you in my capacity as Secretary of Annan Royal Burgh Fishermen's Association. Our association represents the haaf, poke and stake net fishermen who are licensed by Dumfries and Galloway Council. We have grave concerns about the implementation of the licence to kill proposals contained within the latest Wild Fisheries Review publication. Realistically, the fishermen, and the people of Annan, accept that the stake nets, because of their commercial nature, will inevitably be decommissioned. We are deeply saddened but resigned to this fact. We also feel confident that The Scottish Government will pay compensation in full for the loss to The Annan Common Good Fund of circa eleven thousand pounds per annum. This is the sum raised annually in licence fees from fishermen and which is paid directly to The Common Good Fund. However, what the fishermen and residents of Annan will never accept (and will continue to campaign against) is the loss of our haaf net fishing tradition. It would constitute a dark irony indeed, if The Scottish National Party, which was elected to govern on the premise that it would listen to the Scottish people and respect their history and traditions decided, at a stroke, to destroy a vital part of our town's cultural and historic identity.

It is important to appreciate that haaf netting is a hobby, not a commercial activity. The practice can and must be preserved albeit at a reduced level. It is an activity **unique** to the Solway estuary and has been carried out in Annan since Viking times; indeed, the word 'haaf' is Norse for 'channel' or 'stream'. Royal Charters granted by king James V in 1538 and king James VI in 1612 have confirmed these fishing rights for Annan people. The fishings are part of the history of Annan and are celebrated annually as part of our 'Riding of the Marches' tradition when mounted horsemen, guided by fishermen, circumnavigate the limits of our fishing territory: a territory which has been jealously guarded for centuries. Indeed a statue of a haafnetter greets visitors entering the town as if to remind them that the Haaf net fishing rights belong to the townspeople and are an important part of Annan's border town identity.

The threat to our haaf net fishing is not new. We have survived many threats and a legal challenge to our hobby over the years. Indeed, at the beginning of 2015, Annan haafnetters faced exactly the same situation as we now face: a complete ban on the killing of salmon in the Annan area. Angling pressure groups representing The River Eden argued that, since 1) The River Eden had been designated a Special Area of Conservation and that 2) the river was failing its conservation targets, all Annan salmon netting must stop in case we intercepted fish bound for The River Eden. Fortunately, goodwill and common sense prevailed. Annan haafnetters entered into negotiations with The Environment Agency, Annan District Salmon Fishery Board, Natural England and representatives from Dumfries and Galloway Council. It was agreed that haafnetting could continue with each haafnetter granted a small quota of fish based on the number of fish killed by Eden anglers and the number of fish which perished after being caught and released. To further reduce salmon exploitation it

was also agreed that the number of Annan haafnetters be reduced from forty seven to thirty.

The Scottish government must not jeopardise this agreement by introducing draconian, inflexible legislation. Natural England and The Environment agency had no legal duty to protect Annan haafnetters (they only have a responsibility to their own English licence holders) yet they recognised the cultural and historical importance of haafnetting to Annan people and allowed each netsman a quota. There was justification for this stance. Even when all rod caught fish are released apparently unharmed, a proportion die due to the trauma of being hooked and landed. The Environment Agency calculates twenty per cent mortality. (Marine Scotland believes the figure to be ten per cent.) Therefore, in 2015 haafnetters were allowed to kill the same number of fish which anglers inadvertently kill when they catch and release salmon. This is recognised to be a fair way of proceeding into the future. Unlike a rodsman, a haaf netsman can either release or kill a salmon with no attendant mortality, so our quota can be achieved with one hundred per cent accuracy. The Environment Agency already had a precedent for this agreement. It had agreed a similar arrangement for the putcher nets on the Wye estuary, which is also situated in a Special Area of Conservation. If English organisations recognise our right to fish the Solway then surely our own Scottish government will not only recognise our legitimacy but also protect our rights in the future. Indeed, even Annan District Salmon fishery Board has written to the Wild Fisheries Review supporting the continuation of the above agreement. The truth is that the vast majority of fair minded, reasonable people, anglers included, recognise and support our right to continued existence.

We expect that The Scottish Government will not only allow the continuation of haafnetting but also introduce legislation to grant us heritage status so that the haafnetting tradition is protected in perpetuity. Members of Annan Royal Burgh Fishermen's Association met with Andrew Thin, Chairman of The Wild Fisheries Review and requested heritage status at the beginning of The Wild Fisheries Review consultation process. We fear that without such protection we may find ourselves under continual attack from those hostile to our hobby. Just as herons, seals and otters enjoy legal protection from those that would destroy them because of the small toll they exact on salmon populations, we feel that haafnetters have been, and continue to be, a legitimate part of the Solway landscape and require official protection.

There are many UK, European and international precedents for the legal protection of the rights of indigenous groups. In Scotland, residents of The Isle of Lewis are allowed to cull two thousand 'guga' (gannet) chicks annually. This arrangement recognises the cultural importance of the guga gathering tradition despite the gannet being a protected species.

Similarly, the Norwegian government has protected the fishing rights of The Sami people. The Norwegian government took cognisance of the UN Covenant on Civil and political Rights article 27, which avers that persons ***"shall not be denied the right, in community with other members of the group, to enjoy their own culture"***. The UN Human Rights Committee has stated that ***"culture manifests***

itself in many forms” and that the right “may include such traditional activities as fishing or hunting.”

The Supreme courts of America and Canada have repeatedly recognised the rights of communities to continue hunting and fishing in accordance with cultural and historical practice.

We recognise that The Scottish Government has come under pressure from its European neighbours and NASCO to protect salmon stocks. However the NASCO management plan for Scotland 2013-18 (CNL (13) 50) states that when introducing new management measures consideration can be given to: -

“ The heritage value of the fishery; where fishing methods are unique to a very small number of locations, consideration is given to retaining a residual fishery and/permitting a low level of catch”.

Haafnetting surely satisfies the above criteria and description.

A more pragmatic reason to allow haafnetting to continue is that the presence of legitimate fishermen on the Solway will continue to deter illegal netting. Without a licenced fishery an epidemic of poaching will surely follow, which the police and local bailiffs lacking an intimate knowledge of the dangerous Solway sands would find difficult to control.

Finally, according to The River Annan District Salmon Fishery Board report of 2012 “the River Annan has exceeded 1500 landed fish on nine occasions and seven of those have been in the last seven years.”(An average yearly return would be between eight hundred to one thousand fish.)

Should The River Annan really be deemed a category 3 river on the basis of a few bad years’ landings? Reported rod catches are notoriously unreliable and do not take into account fishing effort and river conditions. To impose punishing restrictions on generalised, unreliable, non-empirical science is not acceptable. It would be infinitely more preferable for Marine Scotland to determine the number of returning salmon required by each river to meet its conservation levels.

Please support the continuation of haafnetting, permit us an annual quota, which as a bare minimum is based on the well-established formula of Catch, and Release mortality, and consider incorporating legal protection for haafnetting into Scottish law. Good legislation should not be dictatorial; it should rely on general consensus. This can only be achieved for the licence to kill proposals contained within The Wild fisheries Review if the legitimacy of haafnetting on the Solway is recognised and enshrined in law.

Yours sincerely,

Barry Turner.

Written Submission from Dumfries and Galloway Council

Dear Mr Gibson

SALMON CONSERVATION REGULATIONS

The Annan Common Good Fund Sub Committee of Dumfries and Galloway Council met on 23 February 2016 to consider the effects of the Conservation Regulations to control the killing of wild salmon in Scotland following confirmation that Scottish Ministers will be progressing Salmon Conservation Regulations which will take effect on 1 April 2016.

The Sub Committee agreed to reiterate its concerns surrounding the effects of the Conservation Regulations on the Annan Haaf net fishings and to request that an exemption be incorporated into the Regulations to recognise the heritage value of Haaf Netting in the Solway in line with the report of a Themed-Based Special Session of the Council of NASCO (June 2014). That report stated that fishing is permitted on some stocks below conservation limits, but only if the stock is achieving its management objective or exploitation will not prevent ongoing stock recovery, and there are good social or economic reasons to allow fishing to continue. The socio-economic factors considered include whether the proposed measure will have an unreasonable effect on someone's livelihood or property value; effects on different groups; the effect on the viability of the fishery; and the heritage value of the fisheries.

The Solway Firth has unique methods of fishing. Haaf-Netting was introduced by Norse-Gael settlers around 900AD. The Norse-Gaels originated in Viking colonies of Ireland and Scotland, when Norse-Gaels faced problems and fled south, the tradition of Haaf Netting followed them, bringing with them this unique way of fishing. It is a heritage that has almost died out and now only exists on the Solway.

The Annan Common Good Fund Sub Committee requests that the Annan Common Good Haaf netting activities are considered exceptional in terms of their heritage value and that a salmon kill quota equal to the mortality rate of the rod and line catch on the River Eden be permitted for the Haaf Nets. Catch and Release of Salmon by Haaf net is 'clean' in that there is no mortality rate as the fish are released quickly and undamaged. By applying a catch quota equal to the mortality rate of Salmon on, say, the River Eden, this would ensure that sufficient interest in the net fishery would be sustained, there would be 'parity' for both rod and line and netsmen and the ancient net fishing methods and traditions would be preserved. This would also accord with NASCO Guidelines (27 (e)) in that fishing permitted should be limited to a level that will still permit stock recovery.

An annual assessment would be undertaken based on catch statistics and a quota could be set by a formula based on equality of exploitation for rod and line and net fisheries

The formula suggested for setting a quota is set out below:-

Example:

Total Eden Fish killed, Caught and Released 634
Mortality Rate of Catch & Release (@20%) 126 per season

Quotas would be adjusted accordingly and the carcass tagging scheme to monitor implementation could be continued.

The Annan Common Good Fund Sub Committee respectfully requests that its views are fully considered at the earliest opportunity.

Written submission from James Mackay, Armadale Salmon and Chairman of the Salmon Net fishing Association of Scotland

Carcass tagging is one issue I have contention with. Anglers still should be made to use carcass tags along with nets men as a dead fish is a dead fish no matter who kills it. I was part of a meeting with Kerrie Campbell today (4th March 2016) and previously stressed to Jeff Gibbons (*Scottish Government Officials*) that it would give a fair and accurate number of Salmon killed by anglers if each River system was issued with numbered tags with the name of the fishery as in netting for example if Scottish Government issued 50,000 tags between all grade one rivers or grade two rivers if any fish is allowed to be killed on a grade two if 35,000 tags were handed back at the end of season a definite 15,000 was killed of course if 100,000 was caught and released at 18% mortality 18,000 would die. By imposing numbered carcass tags to net caught fish only and not to fish killed by anglers would kind of imply that nets men are dishonest, I do realise tagging net caught salmon is seen to be a mechanism to administer a quota, again both sectors should be treated fairly.

SSI 2016/104

Title of Instrument:	Common Agricultural Policy (Direct Payments etc.) (Scotland) Amendment Regulations 2016 (SSI 2016/104)
Type of Instrument:	Negative
Laid Date:	17 February 2016
Circulated to Members:	4 March 2016
Meeting Date:	9 March 2016
Minister to attend meeting:	No
Motion for annulment lodged:	No
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?	No
Reporting deadline:	21 March 2016

Purpose

These Regulations amend the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015 ("the principal Regulations"), which make provision in Scotland for the administration of Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy.

EXPLANATORY NOTE

As per purpose above and including:

These Regulations amend the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015 ("the principal Regulations"), which make provision in Scotland for the administration of Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy (OJ L 347, 20.12.2013, p.608) ("the Direct Payments Regulation"), and other associated EU Regulations as referred to in regulation 2(1) of the principal Regulations.

From 1st January 2016, farmers' obligations in return for any payment for agricultural practices beneficial for the climate and the environment (also known as "greening" obligations) under Chapter 3 of Title III to the Direct Payments Regulation, will be delivered through a national environmental certification scheme in accordance with Article 43(3)(b) of the Direct Payments Regulation. That certification scheme comprises the standard greening obligations as set out in Articles 44 to 46 of the

Direct Payments Regulation, plus an additional obligation. The amendments made to the principal Regulations by regulations 3 to 5 make provision for these obligations.

For the purposes of the certification scheme, regulation 3 specifies the applicable obligations on the farmer by inserting a new regulation 15A into the principal Regulations. These obligations are in respect of crop diversification, areas of permanent grassland and ecological focus areas.

Regulation 4 inserts a new regulation 17A into the principal Regulations requiring farmers to prepare an annual plan in respect of the application of inorganic nitrogen fertiliser and lime to certain areas of permanent grassland.

Regulation 5 substitutes a new Part 1 of Schedule 2 (ecological focus areas: crop species that may be used in a mixture of crop species in relation to areas under green cover) to the principal Regulations. It substitutes a new and longer list of crop species that may be used in a mixture of crop species in relation areas under green cover (regulation 5(a)). It also amends Part 3 of that Schedule (ecological focus areas: additional conditions) to provide for an additional management condition in respect of areas with nitrogen fixing crops (regulation 5(b)).

No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen.

POLICY NOTE

THE COMMON AGRICULTURAL POLICY (DIRECT PAYMENTS ETC.) (SCOTLAND) AMENDMENT REGULATIONS 2016 SSI 2016/104

Introduction

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative resolution procedure. It was made on 15 February 2016, laid before the Scottish Parliament on 17 February 2016 and its provisions will come into force on 24 March 2016.

Background

A new direct payments system for farmers replaced the Single Payment Scheme (SFPS) from 1st January 2015 through a revised legislative framework. The new CAP is set out in European Regulations in a series of basic acts :

- Regulation (EU) No 1306/2013 of the European Parliament and of the Council;
- Regulation (EU) No 1307/2013 of the European Parliament and of the Council; and
- Regulation (EU) No 1305/2013 of the European Parliament and of the Council.

There are also a number of Commission delegated and implementing Regulations supplementing these basic acts. This directly applicable European regulatory framework affords some discretion to Member States to adapt some of the arrangements for the implementation of the schemes to their own particular

circumstances. The Scottish Ministers made certain decisions about how the direct payments regime is to be implemented and these were given effect through the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015 (S.S.I. 2015/58) ("the principal Regulations"). The Agricultural Policy (Direct Payments etc.) (Scotland) Amendment Regulations 2015 (S.S.I. 2015/215) subsequently amended the principal Regulations.

This amending instrument introduces the following additional changes to the principal Regulations, in relation to practices beneficial for the climate and the environment ("greening" obligations):

- introducing an additional requirement to prepare a plan in respect of the application of inorganic nitrogen fertiliser and lime, which must be observed on non-exempt areas of permanent grassland
- extending the list of species which may count as green cover under the EFA requirement, to include clover and radish
- introducing an additional management condition which must be met in order for a nitrogen-fixing crop to count as an EFA, requiring two different species, or mixtures of species, to be established.

Outline of Changes to Greening Obligations

The directly applicable EU regulatory framework provides for three standard greening obligations to be met by the farmer, which have applied since 1st January 2015. These obligations are (i) in relation to the cultivation of crops (ii) in relation to areas of permanent grassland and (iii) the obligation to have Ecological Focus Areas (EFA) on arable land. However, the framework also allows Member States discretion to introduce measures equivalent to those standard obligations (see Article 43(3) of, and Annex IX to, Regulation (EU) No 1307/2013). This instrument introduces an equivalent obligation from 1st January 2016.

Accordingly, regulation 3 of this instrument inserts a new regulation 15(A) into the principal Regulations, which specifies the standard and, where applicable the equivalent greening obligation, which must be observed annually, where relevant, by non-exempt farmers on every eligible hectare of their land. Specifically, regulation 15A introduces a new equivalent obligation whereby the farmer must prepare a plan in respect of the application of inorganic nitrogen fertiliser and lime (referred to in new regulation 15A (2)(b)(ii)) on relevant land, in addition to the standard permanent grassland obligation.

Regulation 4 of this amending instrument inserts a new regulation 17A in to the principal Regulations, which describes the activities which must be undertaken in accordance with the requirement to prepare a plan in respect of the application of inorganic nitrogen fertiliser and lime. Under this requirement, a farmer must annually prepare a plan indicating the quantity of inorganic nitrogen fertiliser and lime they intend to apply to each of those land parcels on their holding which contain permanent grassland, excluding those parcels which also contain arable land or rough grazing. The principal objective of this requirement is to encourage better nutrient management planning in order to reduce greenhouse gas emissions from agriculture. Farmers will be encouraged in guidance to base their plan on the results of a soil pH test. If the soil pH is too low (acidic), applying lime can increase the

efficiency with which grass takes up nitrogen from fertilisers, reducing nitrous oxide emissions. Permanent grassland parcels which also contain arable land are exempt in order to ensure field margins are not subject to the requirement. Permanent grassland fields which contain rough grazing are exempt, since fertiliser is not typically applied to this land.

Regulation 5 of this amending instrument extends the list of species which may count as green cover under the EFA greening measure, to include clover and radish. The purpose of this change is to increase flexibility for farmers whilst delivering the environmental objectives of the measure.

Regulation 5 also introduces an additional management condition which must be met in order for a nitrogen-fixing crops to count as an EFA, requiring two different species, or mixtures of species, to be established, with no one species (or, as appropriate, mixture of species) covering more than 75 per cent of the total area of EFA nitrogen-fixing crop. If one of the two crops is sown as a mixture of species, the same species may not be sown (singly or in a mixture) as the second crop. The principal Regulations define the species of nitrogen-fixing crops which may be declared as an EFA.

Effect of Instrument

The Scottish Government has brought forward this secondary legislation to implement appropriate scheme criteria to land in Scotland. It is supplemented by the principal Regulations 2014, Orders under the Scotland Act 1998 (sections 30(3) and 106 Orders) to deal with cross border producers, and the European Integrated Administration and Control System (IACS) protocol between administrations so that the effect of these Orders, secondary legislation and administrative arrangements, will be to allow Scottish Ministers to apply Scottish rules to Scottish land, and, with advice from the respective administrations, their rules to their land for cross-border producers.

Impact Assessments

No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen.

An equality impact assessment was undertaken in relation to the principal Regulations and can be accessed using this link: <http://www.scotland.gov.uk/Topics/People/Equality/18507/EqualityImpactAssessmentSearch> This amending instrument is not expected to alter the findings of this assessment.

Financial Effects

The Schemes covered by this instrument will contribute to enabling the Scottish Ministers to pay around £450 million per annum.

Natural Resources Division
15 February 2016

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Introduction

1. This report covers the work of the Rural Affairs, Climate Change and Environment (RACCE) Committee during the parliamentary year from 11 May 2015 – 23 March 2016.

Inquiries and Reports

Evidence sessions

2. The Committee hosted evidence sessions throughout the year, many responding to topical issues. For example, the Committee spent time considering regular updates on the Agricultural Holdings (Scotland) Act 2003 Remedial Order 2014 mediation and compensation processes, reacting to representations¹ from parties involved. The Committee also examined the Review of Veterinary Disease Surveillance Centres and invited representatives of Scotland's Rural College (SRUC) to discuss progress of the review. Similarly, issues resulting from the implementation of the Common Agricultural Policy (CAP) application process in Scotland occupied much of the Committee's time throughout the year.
3. The Committee also continued to hold annual evidence sessions on publications such as the Crown Estate's Scotland Report and the Wildlife Crime in Scotland 2014 Annual Report.
4. The following topics were also the focus of evidence sessions—
 - First Milk, continuing the themes explored in the Dairy Inquiry;
 - Devolution of management of Crown Estate assets;
 - Marine Protected Areas;
 - Update from the European Commissioner for Agriculture and Rural Development, Phil Hogan;
 - Strategic management at the SRUC;
 - Paris 2015 UN Climate Change Conference COP2.

Bills

Land Reform (Scotland) Bill

5. Scrutiny of the Land Reform (Scotland) Bill² occupied the majority of the Committee's time this year. Prior to the introduction of the Bill, the Committee took evidence³ on the Scottish Government's consultation from stakeholders in Orkney.
6. The Bill was introduced on 22 June 2015 and the Committee issued a call for evidence which resulted in 200 stakeholder submissions⁴. Evidence was taken from a variety of stakeholders at 7 meetings, 3 of which were external. The Stage 1 Report⁵ on the Bill was published on 4 December 2015 and launched at the Registers of Scotland.
7. At Stage 2, a further call for evidence⁶ was issued on amendments proposed by the Scottish Government to s79⁷ (on conversion of 1991 Act tenancies into modern limited duration tenancies).
8. *At the time of publication, the Stage 3 debate on the Bill is still to take place.*

Draft Budget 2016-17

9. In July 2015, the Committee issued correspondence⁸ to other subject committees urging them to take account of climate change targets as part of their budget scrutiny.
10. RACCE reviewed the major themes and trends emerging from budget scrutiny over the last five years. The report on the Draft Budget 2016-17 was published⁹ on 29 January 2016.

Subordinate legislation

11. Over the course of the year, the Committee scrutinised:
 - 7 Scottish Statutory Instruments (SSIs) subject to the affirmative procedure; and
 - 54 SSIs subject to the negative procedure.

Petitions

12. The Committee considered two petitions during the year.

13. It continued its consideration of PE01490¹⁰ on the control of wild geese numbers. The Committee corresponded with the Minister for Environment, Climate Change and Land Reform and petitioner throughout the year, and called¹¹ for an urgent, independent update to the 2010 review of goose management. The Minister responded with¹² her concerns about such action. The Committee undertook to correspond with counterparts in Norway¹³ and the Netherlands¹⁴ independently.
14. *The Committee will consider PE01547¹⁵ (on the conservation of wild salmon) on 9 March and will update this paragraph ahead of publication.*

Engagement and innovation

Engagement on the Land Reform (Scotland) Bill

15. At the heart of the Committee's work on the Land Reform (Scotland) Bill was a desire to ensure scrutiny was based on the views of as many stakeholders as possible.
16. The Committee produced a video¹⁶ following its Orkney visit to promote the visits and the benefits of the Scottish Parliament meeting throughout the country. The call for evidence¹⁷ on the Bill was issued in this format and it produced another video to mark the publication of the Stage 1 Report¹⁸.
17. The Committee toured Scotland to bring its considerations to those most affected by the proposals. It travelled to:
 - Orkney as part of Parliament Day Kirkwall prior to the introduction of the Bill to consider the Scottish Government's consultation at an external meeting;
 - Skye to host an external meeting, taking evidence from three panels of stakeholders ;
 - Fife to visit landowners, community land projects and land managed by the National Trust for Scotland;
 - Islay and Jura to host a public engagement event, as well as visit local tenant farmers and land managers;
 - The Scottish Borders to gain a perspective on tenancy and land management issues in the South of Scotland;
 - The Registers of Scotland offices in Edinburgh;
 - Dumfries to take evidence from the Minister for Environment, Climate Change at an external meeting, the first time evidence from the Scottish Government on a piece of legislation has been heard in a rural location.

18. Endeavouring to ensure its work was accessible to a variety of audiences, the Committee used infographics in its Stage 1 Report¹⁹ to communicate the high levels of engagement generated by its scrutiny.

Legacy process

19. The Committee also sought to be innovative in communicating its suggested priorities for future committees examining the remit. It sought the views of stakeholders by requesting a list of 5 priorities²⁰ and hosting a multi-panel round table evidence session²¹ to discuss these.
20. In compiling its legacy paper²², the Committee again used infographics to communicate its work to a wide range of audiences. It also included a word cloud of inquiry topics to visually highlight the areas which have dominated its work programme.
21. The Convener recorded a video of his foreword to the paper, which was subtitled in Gaelic and included photographs highlighting the range of work the Committee has undertaken in Session 4.

Other events

22. On 28 May, The Committee jointly hosted a visit from John Ashton, former UK Government Special Representative for Climate Change.
23. The Committee visited the Scottish Land Court on 26 January 2016.

Social media

24. The Committee continued to use Twitter²³ to provide updates on its work and to engage with stakeholders and members of the public. It gained 568 new followers²⁴, representing a 23% increase in follower growth from the previous year and is close to achieving 2000 followers. The Committee also participated in Gaelic Twitter day and ensured major announcements or publications were Tweeted in Gaelic throughout the year.

Equalities

25. The Committee has focussed on improving accessibility of its work by a variety of audiences. As part of scrutiny of the Land Reform (Scotland) Bill, the Committee held a meeting dedicated to human rights implications of the Bill and produced a Gaelic version of the Executive Summary of the Stage 1 report on the Bill which was well received by stakeholders. The importance of accessibility by the Gaelic speaking community was also demonstrated by the production of a Gaelic version of the Convener foreword to the legacy paper and by providing Gaelic subtitles to the video version of the document.

26. The Committee also continued its pursuit of equalities issues through its budget scrutiny, including a dedicated section of the report to the Equality Statement and issues considered throughout the session as part of this.

Meetings

27. The Committee met 32 times during the Parliamentary year. Three meetings were held entirely in private and 22 other meetings included items in private.
28. The Committee met in private to consider its future work programmes, reports and responses to correspondence. The Committee held all but three meetings in Edinburgh.

¹ All correspondence can be viewed on the Committee's webpage here:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/67031.aspx>

² *Land Reform (Scotland) Bill*, as introduced (SP Bill 76 Session 4 (2015)).

³ Rural Affairs, Climate Change and Environment Committee, *Official Report*, 8 June 2015.

<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10011>.

⁴ *Written Submissions*.

⁵ Rural Affairs, Climate Change and Environment Committee 10th Report, 2015 (Session 4). *Stage 1 Report on the Land Reform (Scotland) Bill* (SP Paper 845).

⁶ Rural Affairs, Climate Change and Environment Committee *call for evidence* on Land Reform (Scotland) Bill.

⁷ Scottish Government, *Written Submission*, 4 December 2015

⁸ Rural Affairs, Climate Change and Environment Committee, *Letter to subject committees*, 3 July 2016.

⁹ Rural Affairs, Climate Change and Environment Committee *Report to the Finance Committee on the Scottish Government's Draft Budget 2016-17*.

¹⁰ <http://www.scottish.parliament.uk/gettinginvolved/petitions/controlgoosenumbers>

¹¹ Rural Affairs, Climate Change and Environment Committee, *Letter to Minister for Environment, Climate Change and Land Reform*, 16 July 2015

¹² Minister for Environment, Climate Change and Land Reform, *Written Submission*, 1 September 2015

¹³ Rural Affairs, Climate Change and Environment Committee, *Letter to Norwegian Storting*, 30 October 2015 and Research Service of Norwegian Storting, *Written Submission*, 2 November 2015

¹⁴ Rural Affairs, Climate Change and Environment Committee, *Letter to States General of the Netherlands*, 30 October 2015

¹⁵ <http://www.scottish.parliament.uk/GettingInvolved/Petitions/PE01547>

¹⁶ Rural Affairs, Climate Change and Environment Committee, *Committee discusses land reform on Orkney*, 9 June 2015

¹⁷ Rural Affairs, Climate Change and Environment Committee, *Land Reform (Scotland) Bill: Committee seeking public views*, 26 June 2015

¹⁸ Rural Affairs, Climate Change and Environment Committee, *Committee announces Land Reform Bill recommendations*, 4 December 2015

¹⁹ Rural Affairs, Climate Change and Environment Committee 10th Report, 2015 (Session 4). *Stage 1 Report on the Land Reform (Scotland) Bill* (SP Paper 845).

²⁰ *Written submissions*

²¹ Rural Affairs, Climate Change and Environment Committee, *Official Report*, 2 March 2016.

²² *This footnote will be updated upon publication of the legacy paper.*

²³ https://twitter.com/SP_RuralClimate.

²⁴ Data compiled 29 February 2016.