

District Salmon Fishery Boards
Guidance on Good Governance Obligations
August 2013

Introduction

1. This note provides guidance on the statutory good governance obligations placed on District Salmon Fishery Boards. Its anticipated audience is DSFBs, proprietors of salmon fisheries and others with an interest in the management of salmon and freshwater fisheries in Scotland. The note does not constitute legal advice but is intended to aid understanding of and compliance with the obligations. If Boards/individuals wish to seek legal advice on the effect of the good governance obligations they should obtain independent legal opinion as normal.
2. Good governance obligations are defined in law at section 46A(3) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (“the 2003 Act”). They comprise the original obligations placed on Boards by the 2003 Act and those introduced through amendment of the 2003 Act by the Aquaculture and Fisheries (Scotland) Act 2013¹ (“the 2013 Act”) which comes into force on 16 September 2013.
3. The policy objective for good governance obligations is set out in the Policy Memorandum for the 2013 Act². The purpose of the obligations is to enhance openness, transparency and accountability of the management of salmon fisheries by DSFBs. The obligations seek to mainstream existing best practice by DSFBs to ensure that all Boards act in a manner consistent with bodies operating in the public sphere. It is not the intention that the obligations seek to micromanage the business of Boards – the provisions provide flexibility in terms of delivery in acknowledgement of the range in size and resources.
4. The explanatory notes for the 2013 Act³ provide clause by clause guidance on the meaning of each of the Act’s sections. However, this guidance note draws together the full set of statutory good governance obligations placed on Boards and presents, by activity, the actions required.

¹ http://www.legislation.gov.uk/asp/2013/7/pdfs/asp_20130007_en.pdf

² http://www.scottish.parliament.uk/S4_Bills/Aquaculture%20and%20Fisheries/b17s4-introd-pm.pdf

³ http://www.scottish.parliament.uk/S4_Bills/Aquaculture%20and%20Fisheries/b17s4-introd-en.pdf

Annual Report and Accounts

5. The 2003 Act (as amended by the 2013 Act) places a number of obligations on Boards regarding the preparation, content and publication of an annual report and accounts:

- Section 44 (1) requires preparation of a report and a statement of accounts (which shall be audited) relating to the activities of the Board. The report and accounts are to be considered by an annual meeting of qualified proprietors.
- Section 44 (1A) requires the clerk of the Board to arrange for the final report and audited accounts to be published and a copy of these to be sent to Scottish Ministers. Publication is to take place as soon as practicable after the annual meeting of proprietors.
- Section 44 (1B) defines the final report and audited accounts as those submitted for consideration at the annual proprietors' meeting or, if they are revised following that meeting, the revised versions.
- Section 46A requires that the annual report contains specific information: a summary of the activity carried out by the Board under their statutory functions in the reporting year; a summary of the proposed activity of the Board for the year to come; information on complaints made to the Board during the reporting period (their number, a statement of the nature of each and how it was disposed of); and a statement of how the Board has complied with the good governance requirements of the 2003 Act during the course of the reporting year and how they propose to comply in the year to come.

Guidance - Publication

6. In order to demonstrate compliance with publication requirements for the annual report and accounts it is suggested that, as a minimum, the final report and audited accounts are made available on the Board's website or via a link from the ASFB website and hard copies made available on request. Use of alternative and/or additional modes of social media might also be appropriate. Where a website is the preferred method of publication the site must have public access in order that the publication requirement is fulfilled. This criteria applies to all publication requirements under the good governance obligations. It should be noted that the 2003 Act defines the final report and audited accounts as those submitted for consideration by the annual proprietors meeting or, if revised following that meeting, the revised versions.

Guidance - Submission to Ministers

7. The requirement to send copies of the final report and accounts to Ministers should be exercised through sending an electronic copy to the email address dsfbgoodgovernance@scotland.gsi.gov.uk together with details of how these have been published and can be requested by interested parties. An automatic reply will be sent to the email submission and should be retained as evidence of safe receipt. It is not necessary to send hard copies of reports and accounts to Scottish Ministers as evidence of compliance; however Boards may still wish to continue the existing practice of sending copies to the Salmon and Recreational Fisheries policy team as part of their general circulation.

8. It is recommended that any potential significant delays in publishing the annual report and/or audited accounts (and the reasons why) should be notified via an email to the address dsfbgoodgovernance@scotland.gsi.gov.uk.

Guidance - Content

9. It is not intended that the content requirements placed on Boards by the 2003 Act are burdensome or overly-prescriptive, rather that they create a set of minimum requirements around which other content can be built. Boards are encouraged to provide as much additional information that they consider relevant to their stakeholder interests in their annual report. The requirements are intended to help Boards demonstrate that they are fulfilling their legal obligations and promote communication of Board activity.

10. The requirement to report on activity carried out in the reporting year and planned for the coming year is a standard “look back, look forward” report common to annual reports in any field. It is intended to summarise the key activity and outcomes delivered and planned and might usefully point to where additional, more detailed, information can be found.

11. The statement on compliance with good governance requirements in the reporting year might, for example, report on the date of publication and submission to Ministers of the annual report and accounts (for the previous reporting year) and any feedback received from wider stakeholders following publication. Dates of Board meetings and information on where minutes can be obtained might be included along with a report of the issues discussed at the annual public meeting.

12. The statement on complaints received need not be lengthy but should record the number received alongside a short description of their nature and a report of how each was actioned by the Board. Names of complainants are not required or expected but, depending on circumstances, Boards may wish to categorise the types of complainant (e.g. proprietor; member of public).

Meetings of the Board

13. The 2003 Act places good governance obligations on Boards with regard to the meetings of the Board. These obligations supplement the wider statutory framework regarding the proceedings of their meetings under sections 46 and 47 and Schedule 2 of the 2003 Act (and which are not covered by this guidance note).

14. The good governance obligations in relation to meetings can be split into two categories: those which prescribe certain requirements for all meetings of the Board; and additional requirements which are applicable to certain meetings.

Obligations applicable to all meetings of the Board

- Section 46C requires that business at Board meetings is conducted in public. Should there be a good reason, Boards can decide to conduct the meeting or discussion of any particular item of business in private; where this is the case, the reasons for the decision must be stated and recorded in the minute of the meeting. A decision to take items of business in private cannot be taken at the annual public meeting of the Board (see below).
- Section 46C further requires that the clerk take steps to publicise all meetings of the DSFB and ensure that the public are given an opportunity to attend. The latter requirement is applicable unless a decision has been taken by the Board to hold the meeting in private.
- In addition, all meetings of the Board must be minuted and the minute published in a manner considered appropriate by the clerk.

Guidance – public attendance

15. The good governance requirements introduce a presumption that, unless there is good reason, all Board meetings be publicised and open to the public. It is understood that there are, on occasion, items of business which need to be discussed in private. These might include consideration of wages or detailed discussion of enforcement operations. Boards should exercise their judgement on which items of business are not to be discussed in public; however, the reasons for holding meetings (or parts of meetings) in private must be stated and recorded in the minute.

16. With the exception of the annual public meeting, it is not required that members of the public be given an opportunity to participate in Board meetings, rather that they be able to attend as interested observers; however, it is open to Boards, should they wish to do so, to give the public an opportunity to participate.

Guidance – notification of meetings

17. Meetings should be publicised in a way which easily enables interested members of the public to inform themselves of a forthcoming meeting and to attend it. Use might be made of the Board's website, notices in local libraries, tackle shops or other suitable outlets. Boards should keep a record detailing how meetings were publicised and whether members of the public chose to attend. This information might be reflected in the minutes of the meeting.

Guidance – minutes of meetings

18. It is standard practice for organisations operating in the public sphere that minutes of meetings are taken and made available for the public record. Minutes of all meetings must be published in a manner considered appropriate by the clerk. This could involve publication on the Board’s website with hard copies available on request.

Further obligations specific to certain meetings

- Section 46B requires that the Board hold an annual public meeting and ensure that members of the public and others attending the meeting are given the opportunity to propose matters for consideration at that meeting and to speak at it.
- Section 46B further requires that the final annual report and audited accounts must be considered at the annual public meeting.
- Section 46C places obligations on the clerk of a Board in relation to the annual public meeting and the annual meeting of proprietors. No later than 21 days before either meeting, the clerk must prepare and publish a notice specifying the date, time and place of the meeting, a list of matters to be considered and a statement that the meeting is open to the public. In the case of the annual public meeting the notice must provide information about how anglers, tenant netsmen and members of the public can submit proposals for matters to be considered at the meeting and the Board must ensure that they are given an opportunity to speak at the meeting. The clerk should publish the notices relating to both the annual public and the annual proprietors meetings in a manner considered appropriate and send a copy to Scottish Ministers.
- Section 46C requires that minutes of the annual public meeting and the annual proprietors meeting are sent to Scottish Ministers.

Guidance – annual public meeting

19. The aim of the annual public meeting is for the Board to report out to the local community on their activities and seek to engage them in Board business. Business at the meeting must include discussion of the final report and accounts, this might usefully take the form of a presentation on the year’s activities followed by questions from the floor. For this reason, it is strongly recommended that the annual public meeting does not directly follow the annual proprietors meeting (i.e. they are not held on the same day). The purpose of the proprietors’ meeting is for the Board to discuss and agree the annual report and accounts; changes might be anticipated to the report following this meeting and a time period of a few weeks, for example, following the proprietors’ meeting would allow the Board to revise and finalise the report as necessary before publishing it and communicating it to the wider community. In addition, the proprietors’ meeting might usefully consider the format and outline agenda for the forthcoming annual public meeting.

20. In order to enable the Board to prepare for discussions with the public at the annual public meeting (which might be very wide ranging), the notice publicising the meeting should invite interested parties to suggest items for discussion in advance, facilitating preparation of the agenda for the meeting. Common themes or topics might then be presented as substantive agenda items, enabling structured discussion in the context of a clear agenda. Parts of the annual public meeting cannot be held in private and it is anticipated that the members of the public be full participants in these meetings. It is open to Boards to hold other public meetings of this nature during the course of the year should they wish.

Guidance – notification requirements

21. The notification requirement for the annual public and annual proprietors meetings reflect their importance. The annual proprietors' meeting is the opportunity for proprietors to consider the activities of the Board in the previous year and steer future activity. It also provides an accountability mechanism in terms of the salmon assessment. The purpose of the annual public meeting is set out above.

22. Notice of the annual public and annual proprietors' meetings must be given by the clerk to the board at least 21 days in advance to give sufficient opportunity for proprietors and members of the public to attend. It is for the clerk to determine an appropriate way of publicising the notice but this might be by website, placement in local libraries and circulation to all proprietors in the district, for example. The notice should be communicated to Scottish Ministers by emailing a copy to dsfbgoodgovernance@scotland.gsi.gov.uk. An automatic reply will be provided and should be retained by the Board as evidence of safe receipt.

Guidance – submission of minutes

23. Minutes of the annual public and annual proprietors' meetings should be communicated to Scottish Ministers by emailing a copy to dsfbgoodgovernance@scotland.gsi.gov.uk. An automatic reply will be provided and should be retained by the Board as evidence of safe receipt.

Complaints procedure

24. The 2003 Act places obligations on Boards with regard to a complaints procedure:
- Section 46D requires Boards to have in place and keep under a review a procedure for dealing with complaints.
 - The procedure must include provision for dealing with complaints made by:
 - Members of the public;
 - Proprietors of salmon fisheries in the district;
 - Salmon anglers in the district;
 - Tenant netsmen in the district;
 - Members of the Board; and
 - Other DSFBs.
 - The complaints procedure must be publicised and a note of arrangements sent to Scottish Ministers.
 - Boards must keep records of complaints made, the nature of the complaint and how they are disposed of and include a summary of this information in their annual report.

Guidance – development of complaints procedure

25. Boards are encouraged to provide peer support in terms of developing a complaints procedure. A basic template might be developed around which individual Boards can tailor arrangements to suit their local circumstances.

26. The procedure must acknowledge that complaints come from a number of sources and with differing motivations. For this reason, flexibility is provided for Boards to put in place arrangements for handling different categories of complaint. What is important is that the procedure is publicised and kept under review and that complainants are aware of how they can expect their complaint to be considered. The procedure might helpfully be made available via the Board's website and signposted in the annual report.

Guidance – submission to Ministers

27. A copy of the Board's complaints procedure should be submitted to Scottish Ministers by email to dsfbgoodgovernance@scotland.gsi.gov.uk. An automatic reply will be provided and should be retained by the Board as evidence of safe receipt.

Register of Members' Interests

28. The 2003 Act places obligations on Boards with regard to a register of members' relevant financial interests:

- Section 46E requires Boards to have in place and keep under review a register and procedures for the declaration of board members' relevant financial interests (as defined at subsection (4)).
- The arrangements must include provision for:
 - Further defining (beyond the general meaning of subsection (4)) what are relevant financial interests;
 - The keeping by the clerk of a register;
 - Registration by members of relevant financial interests in the register;
 - Declaration by members of relevant financial interests prior to taking part in the board's consideration of any business; and
 - Exclusion of members from participation in the Board's consideration of any business in which the member has a relevant financial interest.
- Section 46E further requires that Boards must ensure that the register of members' relevant financial interests is made available for public inspection.

Guidance – development of register of members' interests

29. Boards are encouraged to provide peer support in terms of developing a register of members' interests. A basic template and set of protocols might be developed around which individual Boards can tailor arrangements to suit their local circumstances. The procedures for declaring relevant financial interests and exclusion of members from participation in board business in which they have an interest should be kept under review and a record of the review process and schedule held by the clerk.

30. Boards have flexibility to define in greater detail what they consider a relevant financial interest to be. The interests of members will vary from area to area but examples might include a material financial interest in renewable energy developments either personally or through a personal or business relationship. It would also be expected that interests relating to employment of staff by the Board be declared. The Board's further definition of relevant financial interests should be recorded and made available as part of the documentation accompanying the register.

Guidance – operation of register of members' interests

31. Arrangements must be made and documented for members to register their relevant financial interests in the Board's register and for these to be updated as required. It is not expected that the register be published but it is a requirement that it be made available for inspection by the public on request.

32. Boards should keep a record of when new/amended relevant financial interests are declared and note, in the minutes of meetings, when members opt out of discussion of business items having declared an interest.