



Association of Salmon Fishery Boards

Evidence presented to the Economy, Energy and Tourism Committee

Regulatory Reform (Scotland) Bill – Stage 1

May 2013

The Association of Salmon Fishery Boards is the representative body for Scotland's 41 District Salmon Fishery Boards (DSFBs) including the River Tweed Commission (RTC), which have a statutory responsibility to protect and improve salmon and sea trout fisheries.

We welcome the opportunity to comment on the relevant sections of the Regulatory Reform (Scotland) Bill.

Overarching Comments

- We support the policy intention behind part 1, as set out in the policy memorandum, but we are concerned that the Bill as drafted may be more wide-ranging than the policy memorandum suggests.
- We welcome the policy intention behind part 2 of the Bill, but we believe that these powers should be further clarified.
- We do not believe that the general purpose of SEPA should be sustainable economic growth. This term has not been defined in law and we believe that the achievement of sustainable development is a far more appropriate purpose for an environmental regulator.

Part 1

- Part 1 places a duty on stakeholders in respect of sustainable economic growth. There is no definition on the face of the Bill or in the accompanying documents as to the definition of sustainable economic growth. The Scottish Government has a specific webpage dedicated to sustainable development which states the following:

The goal of sustainable development is to enable all people throughout the world to satisfy their basic needs and enjoy a better quality of life without compromising the quality of life of future generations.

Sustainable development is integral to the Scottish Government's overall purpose - to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.

This might lead to the conclusion that sustainable development and sustainable economic growth are interchangeable terms. If this is the case, there would appear to be no necessity to include a specific duty on regulators (in part 1) and more specifically SEPA (in part 2) to contribute to achieving sustainable economic growth. A number of regulators are already under a specific duty to contribute to the achievement of sustainable development. For example: section 2 of the Water Environment and Water Services (Scotland) Act 2003 states that Scottish Ministers, SEPA and the responsible authorities must 'act in the way best calculated to contribute to the achievement of sustainable development'; section 3 of the Marine (Scotland) Act requires Scottish Ministers and public authorities to 'act in the way best calculated to further the achievement of sustainable development, including the protection and, where appropriate, enhancement of the health of that area, so far as is consistent with the proper

exercise of that function’; section 51 of the Water Industry (Scotland) Act 2002 states: *‘Scottish Water must, in exercising its functions, act in the way best calculated to contribute to sustainable development.’* However, we are concerned that i) there is scope for the term to be misinterpreted – for example as economically sustainable growth (i.e. not environmentally sustainable) and ii) it is not clear how such a duty would interact with the current duty that SEPA, and other bodies, have to achieve sustainable development.

- It is notable that the duty set out in section 4 is qualified (*except to the extent that it would be inconsistent with the exercise of those functions to do so*). We believe that, given the uncertainty surrounding the specific meaning of sustainable economic growth, and for consistency with other legislation, the duty should be changed to one of **contributing to achieving sustainable development**. Such a duty would not need to be qualified, in the manner set out above.
- We would also draw the Committee’s attention to section 2 (2), which would allow, by regulation, a regulatory requirement to cease to have effect through repealing or revoking primary legislation. This power is qualified by subsection (3), but we would seek clarity on the scope of this power and how it might be used in future, in order to ensure that environmental protection is not compromised.

Part 2

Proposals for regulatory powers

- We are generally supportive of the proposals for regulatory powers for Scottish Ministers, but would make the following points:
 - The general purpose of protecting and improving the environment is welcome, but we believe that specific mention should also be made to national obligations relating to protecting and improving the environment.
 - We believe that the terminology included in section 9 which defines ‘environmental activities’ as being ‘activities that are capable of causing, or are liable to cause, environmental harm’ is confusing and potentially misleading. The use of the term ‘environmental activities’ implies that such activities would be to the benefit of the environment. We believe that alternative terminology should be considered.
 - We believe that the definition of ‘protecting and improving the environment’ should be expanded beyond ‘ecosystems’, to ensure that biodiversity, habitats and species are specifically included.

Proposed powers of enforcement for SEPA

- We agree that SEPA should have the power to use fixed and variable monetary penalties but we are not convinced that these penalties are set at the right level. There must be scope to apply a fine that would both act as a deterrent and adequately penalise those who have caused significant environmental harm. In some cases, this may include extremely large multi-national companies, and we would question whether a £40,000 fine would be an adequate deterrent in such cases. Ultimately we believe that fines should be commensurate with environmental impacts.
- We welcome the provisions relating to enforcement undertakings assuming that these are used in the manner set out in the original consultation : *‘to enable legitimate operators to make amends where an offence has not led to significant environmental harm and has involved little or no blameworthy contact’*. However, we would be very concerned if this approach was seen as a default option as an alternative to

SEPA pursuing enforcement through the courts. In many instances, we believe that the latter is the only appropriate response.

- We support the publication of enforcement action under section 24. We would seek further information as to the circumstances under which orders would include this provision. On the basis that such publicity can often prove a greater deterrent than a financial penalty due to fears over reputational risk, we believe that publication of enforcement action should be the norm, rather than the exception.

Proposed powers to be given to courts

- We support the provisions on compensation orders. However, as we stated above, we believe that fines should be commensurate with environmental impacts, and therefore the cap of £50,000 may not be appropriate.
- As stated above, we welcome publicity orders on the basis that such publicity can often prove a greater deterrent than a financial penalty due to fears over reputational risk.

Chapter 4

- Section 31 sets out an offence relating to significant environmental harm. We would seek clarity as to the threshold or definition of *significant* in this context. Who will make the determination as to what constitutes *significant*, for the purposes of this section.

Chapter 5

- Section 38: Please see our previous comments relating to sustainable economic growth.