

Rural Affairs, Islands and Natural Environment Committee

2nd Meeting, 2023 (Session 6), Wednesday, 25 January

Subordinate legislation

1. This paper supports the Committee's consideration of two Scottish statutory instruments (SSI) subject to the negative parliamentary procedure—
 - [Agriculture \(Retained EU Law and Data\) \(Scotland\) Act 2020 \(Consequential Modifications\) and Agricultural Products, Aquatic Animal Health and Genetically Modified Organisms \(EU Exit\) \(Amendment\) Regulations 2022 \(SSI 2022/361\)](#); and
 - [Conservation of Salmon \(Scotland\) Amendment Regulations 2022 \(SSI 2022/363\)](#)
2. Further information relating to the negative parliamentary procedure is set out in paragraphs 32 and 33.

Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (Consequential Modifications) and Agricultural Products, Aquatic Animal Health and Genetically Modified Organisms (EU Exit) (Amendment) Regulations 2022 (SSI 2022/361)

3. The SSI was laid on 8 December 2022 and comes into force on 2 February 2023. The deadline for subject committee consideration is 30 January 2023. The regulations are made using powers conferred by sections 23(1) of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 and paragraphs 1(1) and (3) and 11M of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018.
4. According to the policy note, the purpose of the instrument is to—
 - make amendments to marketing standards legislation for agricultural products; aquatic animal health; and to genetically modified organisms to address deficiencies arising from the withdrawal of the United Kingdom from the European Union and matters arising out of, or related to, the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement (covered in paragraph 6); and

- make amendments to marketing standards legislation for agricultural products consequential to the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (covered in paragraph 7.
5. According to the policy note, the instrument has no impact on the policy of the individual pieces of legislation and no impact on the delivery or implementation methods, stating that “these changes are both consequential on new provisions under the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (“the 2020 Act”), and minor amendments arising from EU exit to address deficiencies and matters arising out of, or related to, the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement.”
 6. The policy note contains a list of the EU derived domestic regulations that are being amended, these include —
 - The Hops Certification Regulations 1979
 - The Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002
 - The Eggs and Chicks (Scotland) (No. 2) Regulations 2008
 - The Aquatic Animal Health (Scotland) Regulations 2009
 - The Marketing of Horticultural Produce (Scotland) Regulations 2009
 5. All other amendments are in connection to direct retained EU legislation.
 6. The instrument makes operability amendments, designed to address deficiencies arising from the withdrawal of the United Kingdom from the European Union and matters arising out of, or related to, the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement. These include—
 - **Regulation 2** amends Council Regulation (EC) 1234/2007. The amendments replace references to “Member States” “and “Community” with appropriate domestic terms, provide definitions of “third country” and “appropriate authority”, substitute reference to an obsolete directive with the relevant retained EU law provision, and omit redundant provision. According to the policy note, these amendments are to ensure operability, clarity and effective functioning of marketing standards legislation for agricultural products.
 - **Regulation 3** amends Commission Regulation (EC) 543/2008 on poultrymeat marketing standards. The amendment to Article 9(12) substitutes reference to a directive regarding indications of weight with the corresponding domestic legislation. The amendment to Article 20(4) removes a cross-reference to a provision which has been omitted. According to the policy note, these amendments are to ensure operability, clarity and effective functioning of poultrymeat marketing standards legislation.
 - **Regulation 6** amends the CMO Regulation. The amendment to Article 13(4) omits a cross-reference to a redundant provision regarding reference thresholds which has been omitted and substitutes a reference to the relevant retained EU law provision. The amendment to Article 230(1)(c) removes a cross-reference to a redundant power of the Commission to make marketing standards rules regarding

poultrymeat. According to the policy note, these amendments are to ensure operability, clarity and effective functioning of marketing standards legislation for agricultural products.

- **Regulation 13** amends the Hops Certification Regulations 1979. The amendment omits regulation 3(1)(f), which provides that in order to be sold hops and hops products moving from Northern Ireland to Great Britain must be accompanied by an EU certificate or attestation of equivalence issued under Regulation (EU) 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products (“EUR 1308/2013”). Regulation 3(1)(f) is redundant due to provision in the United Kingdom Internal Market Act 2020 for the mutual recognition of goods. According to the policy note, this amendment ensures clarity in the legislation amended.
 - **Regulation 14** amends the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2009, schedule 1, paragraph 6(4)(a). According to the policy note, this amendment reflects the Northern Ireland Protocol and that facilities in Northern Ireland will be held to the requirements of EU law rather than UK law, and therefore enables Northern Ireland facilities to meet the requirements of the regulation.
 - **Regulation 16** amends the Aquatic Animal Health (Scotland) Regulations 2009, regulation 3 and schedule 1E. According to the policy note, the amendments correct a deficient cross-reference in the definition of the term “processing establishment” at regulation 3(1) of the 2009 Regulations, which cross-refers to Article 33 of Chapter V of Directive 2006/88/EC on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals (“Directive 2006/88/EC”). According to the policy note, the amendments ensure that, for the purposes of the definition of the term “processing establishment” in the 2009 Regulations, the reference in Article 33(1) of Directive 2006/88/EC to “the competent authority” is understood to mean “the Scottish Ministers” and the amendments clarify that cross-references in the 2009 Regulations to Directive 2006/88/EC are cross-references to that Directive as it had effect immediately before IP completion day.
7. The policy note explains that the 2020 Act necessitates consequential amendments to the CMO Regulation (the framework for the market measures provided for under the CAP), other retained direct EU legislation and EU derived domestic legislation relating to marketing standards. This is because sections 9 and 11 of the 2020 Act introduced new powers for the Scottish Ministers to make marketing standards regulations. Section 12 and the schedule disapply certain provisions of the CMO Regulation, while providing that regulations previously made under those provisions (in section 1 or section 3 of Chapter 1 of Title 2 of the CMO Regulation) continue to apply to products marketed in Scotland.
 8. The amendments in this instrument that are consequential on the 2020 Act therefore replace references to the disapplied provisions with references to regulations made under those provisions which continue to apply, and to the new powers to make regulations in future. The instrument uses the power to make

consequential provision in section 23(1) of the 2020 Act to make these amendments.

9. More information on the instrument including the retained direct and EU derived domestic regulations being amended is provided in the policy note in **Annexe A**.

Consultation

10. The policy note highlights a four-week consultation was carried out but no responses were received.

Impact assessments

11. According to the policy note, this instrument does not introduce any policy changes and does not alter the Scottish Government's current environmental policies and priorities, so no impact assessments have been carried out.

Financial effects

12. The Scottish Government has confirmed that no financial impact will be caused by a technical change, and no Business and Regulatory Impact Assessment (BRIA) is necessary.

Consideration by the Delegated Powers and Law Reform Committee (DPLRC)

13. [The DPLRC considered the instrument at its meeting on 20 December 2022 and agreed no points arose.](#)

The Conservation of Salmon (Scotland) Amendment Regulations 2022 (SSI 2022/363)

14. The SSI was laid on 9 December 2022 and comes into force on 1 April 2023. The deadline for subject committee consideration is 2 February 2023. The regulations are made using powers conferred under the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003.
15. The Conservation of Salmon (Scotland) Amendment Regulations 2022 amend the Conservation of Salmon (Scotland) 2016 Regulations. Regulation 2 replaces schedule 2 of the 2016 Regulations; Schedule 2 (page 2 of the instrument) provides for the areas of inland waters where there is a prohibition on the retention of any salmon caught.
16. More information on the instrument is provided in the policy note in **Annexe B**.

Background

17. Scottish Ministers have the power to make regulations for the conservation of salmon under Section 38(1) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003. The Conservation of Salmon (Scotland) Regulations 2016 were made in February 2016 and have been amended annually to reflect the most recent stock assessments.
18. Atlantic salmon is a protected species under the EU Habitats Directive. The policy note outlines the Scottish Government's commitment to continuing to follow the principles and policies of the EU Habitats Directive regarding the protection of Atlantic salmon, and to maintain or exceed relevant EU standards for its conservation and management.
19. The North Atlantic Salmon Conservation Organisation (NASCO1) provides guidance that fisheries should be managed on a single river stock basis to reduce risks posed by mixed stock fisheries. The guidance sets out a need to ensure and demonstrate that the killing of wild salmon in Scottish waters is sustainable, and that the greater protection of stocks will help to maximise socio-economic benefits.
20. According to the policy note, the purpose of the 2016 Regulations is to ensure the killing of Atlantic salmon in Scotland is managed by assessing and categorising specified areas of inland water in relation to their conservation status. The Regulations prohibit the retention of Atlantic salmon caught in coastal waters and specified areas of inland waters, and Ministers may agree a conservation plan with local district salmon fishery boards or proprietors in SACs where stocks are in poor conservation status.
21. The 2016 Regulations require the Scottish Ministers to assess the stock levels of salmon in inland waters annually to determine if killing of salmon is sustainable. This assessment is based on rod catch statistics and other data, including information from in-river fish counters, and must take into account the conservation objectives of any SACs in the area.
22. The policy note highlights that Marine Scotland has been engaging with the sector since 2016 to improve the annual conservation assessment process and the data used in the assessment.
23. Following scrutiny of the Regulations in 2018 by the Scottish Parliament's Environment, Climate Change and Land Reform Committee, the Scottish Government agreed that no significant changes would be made to the underlying assessment model for a period of at least three years, to provide stability and certainty to the sector. Each annual assessment is based on the most recent data from catch returns and the fish counter network.

Consultation

24. In accordance with paragraphs 10 and 11 of schedule 1 of the 2003 Act (the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003), Scottish Ministers consulted ahead of making the regulations.
25. This policy note, states that 211 written representations received from individuals and organisations regarding proposed river gradings and a catch and release regime. The representations raised a range of issues, including questioning the assessment approach and methodology, accuracy of catch returns, predation, and wider pressures impacting salmon stocks. Marine Scotland responded to 30 of the submissions.
26. Ministers considered the representations and objections to their original proposals, but concluded that none of them provided enough evidence to warrant a change to the proposed grades. Therefore, the Regulations remain as originally proposed.
27. Some stakeholders raised concerns about the effects of the Covid-19 pandemic on fishing, particularly in the early parts of 2020 and 2021 when fishing in inland waters was restricted or prohibited. The policy note explains that the Scottish Government has conducted a conservation status assessment and adjusted the assessment calculation for each assessment area individually. A paper outlining the methodology adopted was published last year as part of the public consultation on the proposed river gradings for 2022. This was highlighted again as part of the public consultation on the proposed river gradings for 2023.
28. The policy note also mentions that the Scottish Government received a submission from the Salmon Net Fishing Association of Scotland (SNFAS) requesting a review and annual reassessment of the current prohibition on the retention of salmon caught in coastal waters. Despite the decreasing number of salmon returning to Scotland's waters, the Scottish Government does not propose to lift this prohibition and no amendment to the regulation is sought. The policy note also emphasises that Marine Scotland will continue to engage with SNFAS on this issue.
29. In advance of the Committee's consideration of this instrument, clerks asked for further information regarding the decline in wild salmon stocks and if this was the result of external pressures outside of rivers i.e. changes in conditions in the ocean leading to stock decline in rivers.
30. The Scottish Government's response (provided in Annexe C) states that the causes of this decline are varied and complex but the decline in wild salmon stocks across the North Atlantic range is likely due in part to the effects of climate change on their survival during their marine phase.
31. The response also highlights the Wild Salmon Strategy published in January 2022, which outlines the Scottish Government's vision for flourishing populations of wild Atlantic salmon. It set out five priority themes for coordinated action to protect wild salmon, and the Scottish Government is now working with stakeholders to prepare

a detailed Strategy Implementation Plan to guide collective action across government, business and charitable sectors. According to the response, the plan is in its final drafting stage and will be published soon.

Consideration by the Delegated Powers and Law Reform Committee (DPLRC)

32. [The DPLRC considered the instrument at its meeting on 20 December 2022 and agreed no points arose.](#)

Parliamentary procedure – negative instruments

33. The negative parliamentary procedure is set out in Chapter 10 of the Parliament's Standing Orders. Instruments subject to the negative procedure come into force on a specified date and remain in force unless it is annulled by the Parliament. Thus, the Parliament does not need to agree to the instrument in order for it to come into force.
34. The Parliament may, however, and on the recommendation of the lead committee, recommend the instrument be annulled within 40 days of the instrument being laid. Any MSP may by motion propose to the lead committee that the committee recommends "that nothing further is to be done under the instrument". Any motion for annulment would be debated by the lead committee and a report made to Parliament.

For decision

35. The Committee is invited to note the instruments set out above.

**Rural Affairs, Islands and Natural Environment Committee clerks
January 2023**

Policy note

The Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (Consequential Modifications) and Agricultural Products, Aquatic Animal Health and Genetically Modified Organisms (EU Exit) (Amendment) Regulations 2022

SSI 2022/361

1. The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 23(1) of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020, paragraphs 1(1) and (3) and 11M(1) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018 and all other powers enabling them to do so.
2. The instrument is subject to the made negative procedure.

Purpose of the Instrument

3. The purpose of the instrument is to:
 - make amendments to marketing standards legislation for agricultural products; aquatic animal health; and to genetically modified organisms to address deficiencies arising from the withdrawal of the United Kingdom from the European Union and matters arising out of, or related to, the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement.
 - make amendments to marketing standards legislation for agricultural products consequential on the Agriculture (Retained EU Law and Data) (Scotland) Act 2020.

Policy Objectives

4. The policy objectives of this instrument are to make amendments to retained EU law in the fields of marketing standards for agricultural products, aquatic animal health and genetically modified organisms to ensure operability and effective functioning of the legislation amended, and an accurate and up to date statute book. **The instrument has no impact on the policy of the individual pieces of legislation and no impact on the delivery or implementation methods.** The changes are both consequential on new provisions under the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (“the 2020 Act”), and minor amendments arising from EU exit to address deficiencies and matters arising out of, or related to, the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement.

5. The EU derived domestic regulations that are being amended are:
 - The Hops Certification Regulations 1979
 - The Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002
 - The Eggs and Chicks (Scotland) (No. 2) Regulations 2008
 - The Aquatic Animal Health (Scotland) Regulations 2009
 - The Marketing of Horticultural Produce (Scotland) Regulations 2009
6. All other amendments are in connection to direct retained EU legislation

Explanation of the law being amended by the regulations

7. Operability amendments to address deficiencies arising from the withdrawal of the United Kingdom from the European Union, and matters arising out of, or related to, the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement
8. Regulations 2, 3(3) and (5), 6(3), (11)(a) and (b), 13, 14 and 16 of this instrument make operability amendments to retained direct EU legislation and EU derived domestic legislation to address deficiencies arising from the withdrawal of the United Kingdom from the European Union, and matters arising out of, or related to, the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement. These amendments are to the following retained direct and EU derived domestic regulations in the fields of marketing standards for agricultural products, aquatic animal health and genetically modified organisms –
 - Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products, Article 113a, 114(2), 117(1), Annex XIV and Annex XV. Council Regulation (EC) No 1234/2007 was repealed and replaced by the CMO Regulation, however the provisions amended continue to apply. These provisions relate to marketing standards for certain agricultural products.
 - Commission Regulation (EC) No 543/2008 laying down detailed rules for the application of Council Regulation (EC) 1234/2007 as regards marketing standards for poultrymeat, Article 9(12) and 20(4). Article 9(12) makes provision about indications of weight on packaging. Article 20(4) makes provision about water content checks.
 - Retained Regulation (EU) 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (“the CMO Regulation”), Article 13(4) and 230(1)(c). Article 13(4) makes provision about the reference threshold relevant to beef and veal public intervention. Article 230(1)(c) provides that, despite repeal of Regulation (EC) No 1234/2007, certain provisions continue to apply.

- The Hops Certification Regulations 1979, regulation 3(1). This makes provision requiring that hops and hops products must be certified in order to be sold.
- The Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002, schedule 1, paragraph 6(4)(a) sets out the requirements for the facilities which may provide toxicological studies to assess risk to human or animal health in environmental risk assessments, depending on whether this is done in the UK, EU, or elsewhere.
- The Aquatic Animal Health (Scotland) Regulations 2009 (“the 2009 Regulations”), regulation 3 and schedule 1E in connection with the definition of the term “processing establishment” at regulation 3(1) of the 2009 Regulations and the cross-reference which that definition makes to Article 33 of Chapter V of Directive 2006/88/EC on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals.

Amendments consequential on the Agriculture (Retained EU Law and Data) (Scotland) Act 2020

9. The remainder of the regulations in this instrument make amendments consequential on sections 9 to 12 and the schedule of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (“the 2020 Act”), to retained EU law in the area of marketing standards for agricultural products. The CMO Regulation establishes the common organisation of markets in agricultural products. It sets out general marketing standards and contains powers to make and amend marketing standards. A number of retained direct minor EU Regulations were made under these powers. The retained direct and EU derived domestic regulations to which these amendments apply are as follows –
- Commission Regulation (EC) No 543/2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards marketing standards for poultrymeat, Articles 1 and 13.
 - Commission Regulation (EC) 617/2008 laying down detailed rules for implementing Regulation (EC) No 1234/2007 as regards marketing standards for eggs for hatching and farmyard poultry chicks, Article 3(5).
 - Commission Regulation (EC) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors, Articles 3(2), 8, 10(1) and 11(1).
 - The CMO Regulation, Articles 11, 17, 76(1), 80(1), 83(1), 85(1) and (2), 90(2), 228(9), 230(1), and Annex VII, Part II(1), (3), (6), (12), (13) and (14), Part VI I(1) and Part VIII(1) to (6), Annex VIII, Part 1(C) and (D) and Part 2(D).

- Regulation (EU) No 251/2014 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, Article 4(4).
- Commission Delegated Regulation (EU) 2018/273 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings, the vineyard register, accompanying documents and certification, the inward and outward register, compulsory declarations, notifications and publication of notified information, and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the relevant checks and penalties, amending Commission Regulations (EC) No 555/2008, (EC) No 606/2009 and (EC) No 606/2009 and repealing Commission Regulation (EC) No 436/2009 and Commission Delegated Regulation (EU) 2015/560, Articles 29(1), 45 and 47.
- Commission Implementing Regulation (EU) 2018/274 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings, certification, the inward and outward register, compulsory declarations and notifications, and of Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the relevant checks, and repealing Commission Implementing Regulation (EU) 2015/561, Article 14(1).
- Commission Delegated Regulation (EU) 2019/33 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation, Article 40(1).
- Commission Delegated Regulation (EU) 2019/934 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards wine-growing areas where the alcoholic strength may be increased, authorised oenological practices and restrictions applicable to the production and conservation of grapevine products, the minimum percentage of alcohol for by-products and their disposal, and publication of OIV files, Article 4(1), 7(1) and 9(1).
- Commission Implementing Regulation (EU) 2019/935 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards analysis methods for determining the physical, chemical and organoleptic characteristics of grapevine products and notifications of Member States decisions concerning increases in natural alcoholic strength, Article 2.
- The Eggs and Chicks (Scotland) (No.2) Regulations 2008, schedule 2.
- The Marketing of Horticultural Produce (Scotland) Regulations 2009, regulation 2(1).

Reasons for and effect of the proposed change or changes on retained EU law

10. *Operability amendments to address deficiencies arising from the withdrawal of the United Kingdom from the European Union and matters arising out of, or related to, the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement*
11. Regulation 2 amends Council Regulation (EC) 1234/2007. The amendments replace references to “Member States” “and “Community” with appropriate domestic terms, provide definitions of “third country” and “appropriate authority”, substitute reference to an obsolete directive with the relevant retained EU law provision, and omit redundant provision. These amendments are to ensure operability, clarity and effective functioning of marketing standards legislation for agricultural products.
12. Regulation 3 amends Commission Regulation (EC) 543/2008 on poultrymeat marketing standards. The amendment to Article 9(12) substitutes reference to a directive regarding indications of weight with the corresponding domestic legislation. The amendment to Article 20(4) removes a cross-reference to a provision which has been omitted. These amendments are to ensure operability, clarity and effective functioning of poultrymeat marketing standards legislation.
13. Regulation 6 amends the CMO Regulation. The amendment to Article 13(4) omits a cross-reference to a redundant provision regarding reference thresholds which has been omitted and substitutes a reference to the relevant retained EU law provision. The amendment to Article 230(1)(c) removes a cross-reference to a redundant power of the Commission to make marketing standards rules regarding poultrymeat. These amendments are to ensure operability, clarity and effective functioning of marketing standards legislation for agricultural products.
14. Regulation 13 amends the Hops Certification Regulations 1979. The amendment omits regulation 3(1)(f), which provides that in order to be sold hops and hops products moving from Northern Ireland to Great Britain must be accompanied by an EU certificate or attestation of equivalence issued under Regulation (EU) 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products (“EUR 1308/2013”) . Regulation 3(1)(f) is redundant due to provision in the United Kingdom Internal Market Act 2020 for the mutual recognition of goods. This amendment ensures clarity in the legislation amended.
15. Regulation 14 amends the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2009, schedule 1, paragraph 6(4)(a). This amendment reflects the Northern Ireland Protocol and that facilities in Northern Ireland will be held to the requirements of EU law rather than UK law, and therefore enables Northern Ireland facilities to meet the requirements of the regulation.
16. Regulation 16 amends the Aquatic Animal Health (Scotland) Regulations 2009, regulation 3 and schedule 1E. The amendments correct a deficient cross-

reference in the definition of the term “processing establishment” at regulation 3(1) of the 2009 Regulations, which cross-refers to Article 33 of Chapter V of Directive 2006/88/EC on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals (“Directive 2006/88/EC”). The amendments ensure that, for the purposes of the definition of the term “processing establishment” in the 2009 Regulations, the reference in Article 33(1) of Directive 2006/88/EC to “the competent authority” is understood to mean “the Scottish Ministers” and the amendments clarify that cross-references in the 2009 Regulations to Directive 2006/88/EC are cross-references to that Directive as it had effect immediately before IP completion day.

17. *Amendments consequential on the Agriculture (Retained EU Law and Data) (Scotland) Act 2020*

18. The 2020 Act necessitates consequential amendments to the CMO Regulation, other retained direct EU legislation and EU derived domestic legislation relating to marketing standards. This is because sections 9 and 11 of the 2020 Act introduce new powers for the Scottish Ministers to make marketing standards regulations. Section 12 and the schedule disapply certain provisions of the CMO Regulation, while providing that regulations previously made under those provisions (in section 1 or section 3 of Chapter 1 of Title 2 of the CMO Regulation) continue to apply to products marketed in Scotland.

19. The amendments in this instrument that are consequential on the 2020 Act therefore replace references to the disapplied provisions with references to regulations made under those provisions which continue to apply, and to the new powers to make regulations in future. The instrument uses the power to make consequential provision in section 23(1) of the 2020 Act to make these amendments, ensuring the statute book as regards marketing standards for agricultural products is accurate and up to date.

Statements required by European Union (Withdrawal) Act 2018

The statements below are made in relation to regulations 2, 3(3) and (5), 6(3), 11(a) and (b), 14 and 16, which are made under paragraphs 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018.

Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate

20. The Cabinet Secretary for Rural Affairs and Islands has made the following statement “In my view the Agriculture (Retained EU Law and Data) (Scotland)

Act 2020 (Consequential Modifications) and Agricultural Products, Aquatic Animal Health and Genetically Modified Organisms (EU Exit) (Amendment) Regulations 2022 do no more than is appropriate. This is because the regulations make only minor, necessary amendments to provisions that currently contain deficiencies. The amendments are made to ensure effective functioning of legislation in relation to marketing standards for agricultural products, genetically modified organisms and aquatic animal health and do not introduce policy changes.”

Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action

21. The Cabinet Secretary for Rural Affairs and Islands has made the following statement “In my view there are good reasons for the regulations, and I have concluded they are a reasonable course of action. This is because the regulations are to ensure the continued and effective regulation of marketing standards for agricultural products, genetically modified organisms and aquatic animal health. The amendments are minor and technical in nature to ensure legislative operability only.”

Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

22. The Cabinet Secretary for Rural Affairs and Islands has made the following statement “In my view the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (Consequential Modifications) and Agricultural Products, Aquatic Animal Health and Genetically Modified Organisms (EU Exit) (Amendment) Regulations 2022 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

23. The Cabinet Secretary for Rural Affairs and Islands has made the following statement “In my view the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (Consequential Modifications) and Agricultural Products, Aquatic Animal Health and Genetically Modified Organisms (EU Exit) (Amendment) Regulations 2022 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010”.

The statements below are made in relation to regulations 13, 14, 15 and 16, which amend subordinate legislation made under section 2(2) of the European Communities Act 1972

Statement as to why the Scottish Ministers consider that there are good reasons for the amendments

24. The Cabinet Secretary for Rural Affairs and Islands has made the following statement “In my view there are good reasons for these amendments. This is because the amendments make minor, technical changes to ensure clarity and effective functioning of legislation in relation to marketing standards for agricultural products, genetically modified organisms and aquatic animal health. The amendments do not introduce policy changes.”

Statement explaining the law which is relevant to the amendments

25. The Cabinet Secretary for Rural Affairs and Islands has made the following statement,
26. “Regulation 13 amends the Hops Certification Regulations 1979, regulation 3(1). Regulation 3(1) makes provision requiring that hops and hops products must be certified in order to be sold.
26. Regulation 14 amends paragraph 6(4)(a) of schedule 1 of the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002. This paragraph sets out the requirements for the facilities which may provide toxicological studies to assess risk to human or animal health in environmental risk assessments.
27. Regulation 15 amends the Eggs and Chicks (Scotland) (No.2) Regulations 2008, schedule 2, Part 1. Schedule 2, part 1, read with regulation 7, provides that it is an offence to contravene certain provisions of Regulation (EC) No 589/2008 laying down detailed rules for implementing Council Regulation (EC) No. 1234/2007 as regards marketing standards for eggs.
28. Regulation 16 amends the Aquatic Animal Health (Scotland) Regulations 2009 (“the 2009 Regulations”), regulation 3 and schedule 1E in connection with the definition of the term “processing establishment” at regulation 3(1) of the 2009 Regulations and the cross-reference which that definition makes to Article 33 of Chapter V of Directive 2006/88/EC on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals.
29. Regulation 17 amends the Marketing of Horticultural Produce (Scotland) Regulations 2009, regulation 2(1). Regulation 2(1) provides definitions of

“marketing rules” and “specific marketing standards” for the purposes of the regulations.”

Statement explaining the effect of the amendments on retained EU law

30. The Cabinet Secretary for Rural Affairs and Islands has made the following statement,
31. “Regulation 13 – amendment of the Hops Certification Regulations 1979 – the amendment omits regulation 3(1)(f), which provides that in order to be sold hops and hops products moving from Northern Ireland to Great Britain must be accompanied by an EU certificate or attestation of equivalence issued under Regulation (EU) 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products (“EUR 1308/2013”). Regulation 3(1)(f) is now redundant due to provision in the Internal Market Act 2020 for the mutual recognition of goods.
32. Regulation 14 - amendment of the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 – the amendment provides that, where an environmental assessment for GMO marketing consent contains a toxicological study which has been carried out in a laboratory in Northern Ireland then that laboratory must be subject to the relevant EU laws ensuring good laboratory practice and the verification of the laboratory’s applications for tests on chemical substances.
33. Regulation 15 – amendment of the Eggs and Chicks (Scotland) (No.2) Regulations 2008 – the amendment omits spent cross-references to EUR 1308/2013, Article 75, which has been dis-applied by section 12 and schedule 1 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020.”
34. Regulation 16 – amendments the the Aquatic Animal Health (Scotland) Regulations 2009 (“the 2009 Regulations”) - the amendments correct a deficient cross-reference in the definition of the term “processing establishment” at regulation 3(1) of the 2009 Regulations, which cross-refers to Article 33 of Chapter V of Directive 2006/88/EC on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals (“Directive 2006/88/EC”). The amendments ensure that, for the purposes of the definition of the term “processing establishment” in the 2009 Regulations, the reference in Article 33(1) of Directive 2006/88/EC to “the competent authority” is understood to mean “the Scottish Ministers” and the amendments clarify that cross-references in the 2009 Regulations to Directive 2006/88/EC are cross-references to that Directive as it had effect immediately before IP completion day.
35. Regulation 17 – amendment of the Marketing of Horticultural Produce (Scotland) Regulations 2009 – the amendments omit spent cross-references to EUR 1308/2013, Article 75, which has been dis-applied by section 12 and schedule 1 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020.”

Choice of procedure

36. Insofar as this instrument is made under the powers conferred by paragraphs 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018, the Scottish Ministers consider it appropriate that it is made under the negative procedure. The mandatory affirmative procedure in terms of paragraph 1(2) of schedule 7 does not apply. Given the amendments made are minor, are to ensure effective functioning of the legislation amended, and do not introduce policy changes, the negative procedure is considered appropriate.

Consultation

37. To comply with the requirements of Article 9 of Regulation (EC) 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, a four week targeted consultation was carried out. The consultation explained to industry that the proposals did not change current policy or implementation methods and were technical amendments due to (a) the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 and (b) leaving the EU. No responses were received.

Impact Assessments

38. Impact assessments have not been carried out because the instrument is aimed at preserving the effect of current regimes and does not introduce policy changes. It does not alter Scottish Government's current environmental policies and priorities and,

Financial Effects

39. The Cabinet Secretary for Rural Affairs and Islands confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary for this as the instrument has no financial effects on the Scottish Government, local government or on business. There is no impact to industry due to these changes being strictly of a technical nature.

Scottish Government
Agriculture and Rural Economy Directorate
December 2022

Policy note

The Conservation of Salmon (Scotland) Amendment Regulations 2022

SSI 2022/363

The above instrument is to be made in exercise of powers conferred by section 38(1) and 6(b) and (c) and paragraphs 7(b) and 14(1) of schedule 1 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003. The instrument is subject to negative procedure.

Summary

The Conservation of Salmon (Scotland) Amendment Regulations 2022 amend the Conservation of Salmon (Scotland) Regulations 2016 (“the 2016 Regulations”) which make provision for the conservation of salmon in Scotland. Regulation 2 amends the 2016 Regulations by substituting schedule 2 of the 2016 Regulations. The purpose of the current Regulations is to amend the 2016 Regulations to reflect the most recent stock assessment for the 2023 salmon fishing season.

Policy Objectives

1. Atlantic salmon is a protected species under the EU Habitats Directive. Following the UK’s withdrawal from the European Union the Scottish Government is committed to continuing, to the greatest extent possible, to follow the principles and policies set out in the Directive; and will maintain, and where possible, exceed, relevant EU standards relating to the conservation and management of salmon.
2. In addition, the North Atlantic Salmon Conservation Organisation (NASCO¹) 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). Salmon continue to face many pressures in the marine, coastal and freshwater environment and there is an ongoing need to ensure and to demonstrate that any killing of wild salmon in Scottish waters is sustainable. In addition, greater protection of stocks will help to maximise the socio-economic benefits that flow from them.
3. The Conservation of Salmon (Scotland) Amendment Regulations 2022 amend the 2016 Regulations which make provision for the conservation of salmon in Scotland. The purpose of the 2016 Regulations is to ensure that the killing of Atlantic salmon in Scotland is managed by assessing and categorising specified areas of inland water in relation to their conservation status. The 2016 Regulations prohibit the retention of Atlantic salmon caught in any coastal waters in a salmon fishery district 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, particularly in Special Areas of Conservation (SACs) where stocks have been identified as being in poor conservation status.

4. The 2016 Regulations placed 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. This assessment is carried out annually. Where an area of inland waters includes a SAC 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 killing of salmon is sustainable in the area in question. The assessment process entails the collation of information on population levels of salmon in each assessment area based on rod catch statistics and other data including information from in-river fish counters.
5. Since the introduction of the 2016 Regulations, Marine Scotland has engaged with the sector to develop and improve the annual conservation assessment process and the robustness of the data used in the assessment. Following scrutiny of the Regulations in 2018 by the Scottish Parliament's Environment, Climate Change and Land Reform Committee, the Scottish Government agreed that no significant changes would be made to the underlying assessment model for a period of at least three years, to provide stability and certainty to the sector. Each annual assessment is, however, based on the most recently available data from submitted catch returns and the fish counter network.

Legislative Context

6. 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. The Conservation of Salmon (Scotland) Regulations 2016 were made in February 2016 and came into force on 31 March 2016. Subsequent Amendment Regulations, reflecting developments in the assessment process and the outcomes of the annual assessment, came into force on 1 April in each year since 2016. The purpose of the current Regulations is to amend the 2016 Regulations to reflect the most recent stock assessment for the 2023 fishing season.

The Regulations

7. The Conservation of Salmon (Scotland) Amendment Regulations 2022 amend the 2016 Regulations. Regulation 2 amends the 2016 Regulations by substituting schedule 2 of the 2016 Regulations. Schedule 2 describes the areas of inland waters where there is a prohibition on the retention of any salmon caught.

Consultation

8. In accordance with paragraphs 10 and 11 of schedule 1 of the 2003 Act, the Scottish Ministers have consulted with such persons they considered appropriate and have given notice of the general effect of their proposals by way of an

advertisement in three national newspapers. The consultation period ran from 10 August to 9 September 2022.

9. A total of 211 written representations were received from individuals and organisations including angling clubs, district salmon fishery boards (DSFBs) and fishery owners. This year alongside the proposed river gradings, additional views were sought on a catch and release regime, which led to an increase in the number of representations received on the proposed river gradings. The representations covered a range of issues, including questioning the assessment approach and methodology. Several of those responding have made similar representations in previous years. Recurring issues or themes raised in the comments also included a number of people commenting on issues relating to the accuracy or otherwise of catch returns submitted by anglers, predation by seals or piscivorous birds or to wider pressures impacting salmon stocks including climate change. Representations that raised issues relating to the proposed river gradings have been considered in finalising the draft Amendment Regulations. Marine Scotland has responded to thirty of the submissions received, with a view to answering the points made.
10. In accordance with paragraphs 12 and 14(1) of schedule 1 of the 2003 Act, Ministers considered the representations and objections in relation to the proposals and determined to progress their original proposals. A number of representations indicated that they believed the proposed grades for their river/s of interest were incorrect, however none of these representations presented sufficient evidence to warrant a change to any of the proposed grades. As such, there are no changes affecting the Regulations as proposed.
11. A small number of stakeholders raised the issue of how the Covid-19 pandemic impacted fishing, particularly during the early parts of the 2020 and 2021 fishing seasons when fishing in inland waters was prohibited or restricted. In carrying out the latest conservation status assessment the Scottish Government has considered these potential impacts and has adjusted the assessment calculation for each assessment area individually. A detailed paper setting out the methodology adopted was published last year as part of the public consultation on the proposed river gradings for 2022. This was highlighted again as part of the public consultation on the proposed river gradings for 2023.
12. A submission was also received from the Salmon Net Fishing Association of Scotland (SNFAS) seeking a review, and annual reassessment, of the current prohibition on the retention of salmon caught in coastal waters, as set out in regulation 3(1) of the 2016 Regulations. Given the continuing downward trend in the number of salmon returning to Scotland's waters, and the commitment to reduce the risks posed by mixed stock fisheries, the Scottish Government does not propose to lift this prohibition, and no amendment to regulation 3(1) is sought. Marine Scotland will continue to engage with SNFAS on this issue going forward.

Impact Assessments and Financial effects

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

14. The necessity to prepare other impact assessments has been considered, however in these circumstances only a BRIA is required for these Regulations.

Marine Scotland
December 2022

The Conservation of Salmon (Scotland) Amendment Regulations 2022 (SSI 2022/363)

Additional information provided by the Scottish Government.

1. The reasons for the decline in wild salmon stocks are both wide-ranging and complex. Although the pattern of decline is repeated across the salmon's North Atlantic range, likely caused, at least in part, by the effect of climate change on survival during its marine phase, there remains much that we can do in our rivers and coastal waters to build resilience and transform the fortunes of this iconic fish for the better.
2. The Scottish Government published the [Wild Salmon Strategy](#) in January 2022 which set out our vision for flourishing populations of wild Atlantic salmon. We have set out five priority themes which form a framework for coordinated action to protect wild salmon. As is outlined in the strategy, positive outcomes for wild Atlantic salmon in Scotland cannot be achieved by government acting alone. We have been working with stakeholders to prepare a detailed Strategy Implementation Plan, which will guide collective action for wild Atlantic salmon across government, business and charitable sectors. This implementation plan is now in its final drafting stage and we will inform the RAINE Committee once it has been published.
3. Mortality at sea appears to be a major factor in the widespread decline of salmon across its North Atlantic range. Although the exact underlying mechanisms are unclear, it is likely that climate change driven alterations in oceanic processes and the effect on prey availability are key factors. While the Scottish Government is committed to end our contribution to greenhouse gas emissions by 2045 as part of global efforts to limit warming to 1.5°C, our immediate management approach needs to focus on building resilience in salmon populations to widespread climate-induced effects.
4. Relative to the wider marine environment, our understanding of pressures and ability to take action is greater in freshwater and coastal environments. Therefore, we are clear that optimising the number and quality of healthy, naturally produced salmon smolts leaving Scotland's rivers and coastal areas is of principal importance to achieving our objectives. Nevertheless, we will work with international partners through NASCO and other fora to alleviate pressures on the High Seas, for example, due to illegal fisheries, should opportunities arise.