

SALMON & TROUT CONSERVATION

SUBMISSION TO EFRA COMMITTEE ON AGRICULTURE BILL

8th October 2018



Introduction

1. Salmon & Trout Conservation thanks the Environment, Food and Rural Affairs Committee for the opportunity to make this submission on the provisions of the Agriculture Bill.
2. This submission addresses the situation in England.
3. S&TC broadly welcomes the provisions of the Bill, particularly the central proposal to use public money to provide public goods, including enriching wildlife habitats, preventing flooding, improving the quality of air, reducing the pollution of watercourses and mitigating and adapting to climate change.
4. The Committee will no doubt receive a broad range of evidence across the detail of the proposals within the Agriculture Bill. Therefore S&TC will concentrate on the role of regulation in controlling agricultural pollution of watercourses, which has a direct and pervasive impact on the ecological status of water bodies and the conservation of aquatic species.
5. A review by S&TC of predecessor codes of good practice, as against the requirements of The Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018, (see Appendix 1), shows that little has changed since 1991 and, in some cases, since 1985 as to what Government has suggested to farmers is good practice to avoid pollution of watercourses, yet agricultural pollution of watercourses remains a widespread problem.
6. Whatever provision is ultimately made to provide public money for public goods, S&TC believes that it is also essential to have a suite of rules and regulations that set a floor for agricultural practice below which no farmer should fall if public money is to be given.
7. S&TC therefore suggests an appropriate amendment to the Bill.

The Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018 and the need for basic compliance with agricultural rules

8. The introduction this year of the Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018 laid down minimum rules for farmers to reduce agricultural diffuse pollution.
9. The 2018 Regulations add to a list of agri-environment regulations which include, inter alia, the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010 and the Nitrate Pollution Prevention Regulations 2015.
10. However, these 2018 Regulations fell short of being the ambitious and progressive rules that they could have been. S&TC was disappointed that the 2018 Regulations set a very low 'basic' or minimum level for agricultural practices that can have a negative impact on water quality. Many common practices are well within the 2018 Regulations and have the potential, when spread across whole catchments, to make a marked contribution to diffuse agricultural pollution. The agricultural diffuse pollution problem is still restraining the achievement of good ecological status (as required by the Water Framework Directive) in so many water bodies in England.

11. S&TC has conducted a review of predecessor codes of good practice and analysed the requirements of those codes as against the 2018 Regulations, to assess what impact the 2018 Regulations could be expected to have on slurry and muck spreading, fertiliser use, run-off and other diffuse agricultural pollution sources that the earlier codes did not.
12. The earlier codes, covering 1985 to 2011, that S&TC has reviewed were:
- The Code of Good Agricultural Practice (MAFF 1985)
 - The Code of Good Agricultural Practice for the Protection of Water (MAFF 1991).
 - The Water Code – The Code of Good Agricultural Practice for the Protection of Water (DEFRA 1998)
 - The Water, Soil and Air Code: Protecting our Water, Soil and Air. A Code of Good Agricultural Practice for farmers, growers and land managers (DEFRA 2009); and
 - The Code of Good Agricultural Practice for the Protection of Water, Soil and Air for Wales (Welsh Assembly Government 2011)
13. The analysis in Appendix 1 to this submission shows, in the left hand column, the requirements of 2018 Regulations, regulation by regulation. The remaining columns show the equivalent provisions in the earlier codes.
14. What is very obvious is that, to a very great extent indeed, what is now laid down in the 2018 Regulations merely reflects what has been recommended to farmers as good agricultural practice certainly since 1991, and in many respects since 1985. That the content of the 2018 Regulations is not a significant advance on what has already been in previous codes is surprising, given the stubborn nature of diffuse agricultural pollution.
15. Despite the similarity between what is now required under the 2018 Regulations, as against the earlier codes, it is perhaps possible that the rules, being in the form of Regulations, might carry more weight and be more likely to influence farmer behaviour.
16. However, it is worth noting that the earlier codes were not strictly voluntary. Although the 2018 Regulations now carry with them potential criminal penalties punishable by way of fines, it would not be correct to say that the earlier codes were simply advisory and carried no legal threat.
17. The 2009 Code formed the basis for farmers to demonstrate adherence to the various environmental standards required for cross compliance, in order that they then receive their full single farm payment. Parts of the 2009 Code were also made under section 97 of the Water Resources Act 1991, meaning that the Environment Agency in England also would take the Code into account when issuing discharge prohibition notices under Section 86 of the 1991 Act and when exercising powers conferred on them by regulations under Section 92 of the same Act – *“following the Code is not a defence to the offence of polluting controlled waters but it could be taken into account in deciding on enforcement action, penalties and mitigation”*.
18. The 1998 Code was a statutory Code made under section 97 of the Water Resources Act 1991 meaning that if a farmer did not keep to the Code it would not necessarily be an offence, but it would be taken into account in any legal action in relation to agricultural pollution and following the Code itself would not necessarily be a defence against the charge of causing pollution.
19. The 1991 Code was also a statutory code drawn under section 116 of the Water Act 1989 and was designed to be taken into account in any legal action against a farmer, in a similar manner.

20. Indeed thirty three years ago, the 1985 Code was approved by the then Minister of Agriculture, Fisheries and Food for the purposes of section 31(2)(c) of the Control of Pollution Act 1974. Section 31 of the 1974 Act made it an offence to knowingly permit or cause poisonous noxious or polluting matter to enter a stream or controlled waters or any underground waters etc. The Code was designed and approved under the 1974 Act, laying out what was deemed good agricultural practice, which if followed would absolve a farmer from liability under section 31, causing or knowingly permitting pollution.
21. While the introduction of direct criminal penalties for breaching the 2018 Regulations is welcome - subject to the 'catch-all' Regulation 12 defence of due diligence, such that a farmer who takes all reasonable steps and exercises all due diligence to avoid committing an offence is absolved of liability - whether or not these 2018 Regulations make a difference on the ground must now come down to enforcement.
22. Enforcement of the 2018 Regulations needs to involve more rigorous and more regular inspection of farmed premises. The 2018 Regulations will not in themselves alter matters on the ground if, in some cases, over 30 years of guidance in the various codes has not sufficiently altered behaviour.
23. It is certainly not the case that the 2018 Regulations require a period of time to bed in as has been suggested to S&TC members by Environment Agency staff in the field.

What is required in the Agriculture Bill?

24. In the context of the Bill, it is important to note that the Command Paper did recognise that *"working with the Environment Agency we have developed new farming rules [the 2018 Regulations] for water to improve water quality and soil health. This new set of common sense rules will apply to all farmers"* and, at page 50, that *"as soon as is practical we propose to maintain a strong regulatory baseline of standards that reflects the polluter pays principle. This will be the foundation of our future environmental land management system setting out minimum standards that all farmers and land managers must comply with."*
25. However S&TC noted with some concern the Secretary of State's speech to the Oxford Farming Conference in early 2018, in which the issue of regulations, and farm inspections under those regulations, was addressed. The Secretary of State said he hoped *"to look at how we can reduce the number of inspections overall, make them more genuinely risk based and have them focus on those limited areas where standards are not where they should be"*.
26. While, in the Command Paper, *Health and Harmony*, at page 49, the Secretary of State recognised that the broad spectrum of environmental legislation *"provides crucial protection for our environment and high quality standards on farms"*, the Government's conclusion appears to be that the existing system is considered to place excessive burdens on farmers with over-inspection of regulations.
27. This does not easily chime with Dame Glenys Stacey's interim report from July 2018 *Farm Inspection and Regulation Review*, which, at page 30, recognised the limitations of the Environment Agency inspection regime noting that only 40 Environment Agency staff were available to inspect farms meaning that any individual farm stood just a 1 in 200 chance of being inspected by the Agency in any one year. She further noted that the Environment Agency could not say what the rate of dairy farmer non-compliance for slurry storage, a key environmental risk, but that the Environment Agency *"thinks non-compliance is common"*.
28. It is worth repeating that - the Agency believes non-compliance with slurry rules is common - that is a shocking admission and one that must be addressed.

29. In that vein, S&TC would like to understand how the Agency envisages its enforcement and prosecution policy being applied to the 2018 Regulations to deliver more rapid and lasting success than all the forerunner codes have managed to achieve. Does the Agency have the resources to police the new rules properly? Does the Agency have the political support from within Government to enforce the new rules? We note that the Secretary of State can issue guidance to the Agency under Regulation 15 of the 2018 Regulations, which could potentially require the Agency to take a robust attitude towards implementation and enforcement. Has the Agency received any guidance on the new rules?
30. Dame Stacey goes on to say that “*good enforcement generally starts with advice and guidance and simple persuasion*”, but it is clear that, in respect of basic farm performance, a small but not insignificant proportion of farmers have simply not responded, over many years, to advice and guidance presented in various Codes, nor to gentle persuasion.
31. In such cases, the evidence suggests that strict regulation, frequent monitoring and inspection, coupled with robust enforcement, is required to change behaviour.
32. S&TC therefore believes it is essential to design a system that cover all eventualities, both the ‘good’ farmers who wish to embrace enthusiastically the new system of public money for public goods, which we believe will be the majority, but also the minority of farmers who have ignored 33 years of codes of practice, and will probably ignore the 2018 Regulations as well. These farmers have a disproportionately negative impact of water quality and cause reputational damage to all farmers.
33. To deal with the stubborn problems of agricultural diffuse pollution, the new system must combine the ‘stick’ approach of regulation, inspection and enforcement, with the ‘carrot’ of public money for public goods.
34. S&TC UK therefore proposes that the payment of public money for public goods must be made strictly conditional upon any person seeking to receive such payments, also achieving basic overall compliance with all relevant existing farm rules, including the Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018, the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010 and the Nitrate Pollution Prevention Regulations 2015.
35. It should not be possible for payments to be made to farmers who fail to achieve basic compliance with basic rules.
36. S&TC notes that, in relation to payments during the transitional period, the Secretary of State has already stated that payments would be guaranteed “*provided our own... environmental and other laws were observed...*”. S&TC believes that pre-condition should be extended beyond any transition.
37. S&TC UK therefore proposes a simple amendment to Clause 2

Page 2, line 24, at end insert "provided that no person may receive assistance unless in the opinion of the Secretary of State that person is complying with the regulations and codes listed in Schedule XYZ

[The Schedule referred to would then listing all the various existing agricultural regulations and codes including the Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018, the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010 and the Nitrate Pollution Prevention Regulations 2015].

38. S&TC UK remains ready to assist in bringing forward such an amendment as the members of the committee may consider appropriate.