



RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

AGENDA

7th Meeting, 2016 (Session 4)

Wednesday 2 March 2016

The Committee will meet at 9.30 am in the Mary Fairfax Somerville Room (CR2).

1. **Legacy process:** The Committee will take evidence from:

Clare Slipper, Parliamentary Officer, NFU Scotland;

Sarah-Jane Laing, Director of Policy and Parliamentary Affairs, Scottish Land and Estates;

Bertie Armstrong, Chief Executive, Scottish Fishermen's Federation;

Alan Laidlaw, Head of Property - Scotland Portfolio, The Crown Estate;

Calum Duncan, Convenor, Scottish Environment LINK Marine Group;

Patrick Krause, Chief Executive, Scottish Crofting Federation;

Ian Cooke, Director, Development Trusts Association Scotland;

Dr Sarah Skerratt, Head of Land Economy, Environment and Society Research Group, and Director of Rural Policy Centre, Scotland's Rural College;

Jonathan Hughes, Chief Executive, Scottish Wildlife Trust;

Pete Ritchie, Executive Director, Nourish Scotland;

and then from—

Sam Gardner, Head of Policy, WWF Scotland;

Iain Gulland, Chief Executive, Zero Waste Scotland;

Colin Campbell, Director of Science and Interim CEO, James Hutton Institute;

Tom Ballantine, Chair, Stop Climate Chaos Scotland;

Andy Kerr, Executive Director, Edinburgh Centre for Carbon Innovation;

Willie McGhee, Forest Policy Group;

Stuart Goodall, Chief Executive, Confor.

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

Seed (Fees) (Scotland) Regulations 2016 (SSI 2016/69);

Seed (Licensing and Enforcement etc.)(Scotland) Regulations 2016 (SSI 2016/68);

Plant Health (Scotland) Amendment Order 2016 (SSI 2016/83);

Wester Ross Marine Conservation Order 2016 (SSI2016/88);

Loch Sunart to the Sound of Jura Marine Conservation Order 2016 (SSI2016/90).

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Clerk to the Rural Affairs, Climate Change and Environment Committee
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The papers for this meeting are as follows—

Agenda item 1

Legacy sessions cover note

RACCE/S4/16/7/1

Agenda item 2

Subordinate Legislation Cover Note

RACCE/S4/16/7/2

Legacy process

1. As the end of session four of the Scottish Parliament approaches, the Rural Affairs, Climate Change and Environment (RACCE) Committee will publish a legacy report before the dissolution of Parliament on 24 March 2016.
2. The purpose of that report is to—
 - look back at the Committee’s work in this session;
 - reflect on the Committee’s effectiveness and successes;
 - examine lessons learned;
 - identify practical and procedural challenges for the future; and
 - to set out some of the issues and priorities which lie ahead for whatever successor committees deal with rural affairs, climate change and environment matters in the next session of Parliament.
3. In addition to the legacy report, the Committee agreed to hold two formal roundtable evidence sessions as part of its legacy process designed to inform successor committees.
4. The roundtable sessions have been split into a ‘rural affairs’ session and a ‘climate change and environment’ session, to enable the Committee to hear as many views as possible (although it is expected that there may be some overlap between these and that issues covering the whole of the Committee’s remit may be discussed during both sessions).
5. Those taking part are—

Rural affairs

- National Farmers Union Scotland;
- Scottish Land and Estates;
- Scottish Fishermen’s Federation;
- The Crown Estate;
- SE LINK Marine Group;
- Scottish Crofting Federation;
- Scotland’s Rural College;
- Development Trusts Association;
- Scottish Wildlife Trust; and
- Nourish.

Climate Change and Environment

- Stop Climate Chaos Scotland;
- Edinburgh Centre for Carbon Innovation;
- WWF;
- Zero Waste Scotland;
- The James Hutton Institute;
- Forest Policy Group; and
- Confor.

6. Those attending were given the opportunity to send, in advance, a brief list of up to 5 bullet points stating their priority issues for the next session of Parliament. The lists received have been published on the Committee's website and are attached at the **Annexe A**.

7. In addition, the Committee has received two other written submissions from organisations intended to inform the legacy process. These have also been published online and are attached at **Annexe B**.

8. The RACCE Committee will consider and agree its legacy report at its meeting on 9 March 2016 (which is currently scheduled to be the Committee's final meeting before the dissolution of Parliament). The report will be published before dissolution on the 24 March 2016.

Clerks

Rural Affairs, Climate Change and Environment Committee

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Written submission from NFU Scotland

NFU Scotland welcomes the opportunity to submit views on possible priority issues for the successor committee on Rural Affairs, Climate Change and Environment.

Five headings are detailed below, with suggested lines of inquiry.

1. Food production and security: Food sufficiency in Scotland and the UK – how to promote local food and better procurement; developing supply chains and collaborative projects with UK and EU partners designed specifically for exports, with tools to review successful food exports; growing Scotland's food production potential with investment and processing capacity; managing volatility and supply chains.

2. Young people and the rural economy: Opportunities and skills training available to young people in the Scottish agricultural, and food and drink sector; extent of school education on the value and contribution of agriculture and the rural community to the Scottish society and the Scottish economy; development of high-value jobs in rural areas and associated issues such as transport and digital connectivity and wages; opportunities for new entrants into agriculture – avoiding new entrant traps, recognising farmer development, building profitable businesses, access to land and government support.

3. Biodiversity and rural land management: Sustaining healthy, managed ecosystems amongst wider land uses; species reintroduction; designated sites and funding for sites and species; strategic direction of SNH.

4. Common Agricultural Policy: Conducting a mid-term assessment of the Scottish Government's implementation of the CAP and a look-ahead to the 2020 reform – Scotland's priorities for the renegotiation.

5. Science in agriculture: Taking evidence on innovation and new farming techniques to sustain the resilience of Scottish agriculture; the future for Scotland's research networks and capital; adoption of science in Scottish regulations; Scottish product development to improve eating experience and health benefits.

Written submission from Scottish Land and Estates

Agricultural strategy

We would suggest that the Committee should scrutinise the Scottish Government's approach to agricultural policy. We believe that there has been a strategic vacuum for too long with the focus simply on limiting the damage of change in CAP payments. The government has started a national discussion on the future of agriculture but it is a very high level document that does not provide clear medium term priorities and actions. This does not bode well for discussions on the future of CAP.

Rural development policy

In the early days of the Scottish Parliament rural development was a priority. Now it seems to be focused on the delivery of the SRDP or development via community ownership. In 2008 the OECD said that: "Scotland's approach to rural policy is innovative and rapidly evolving, but is still suffering from a sector-by-sector focus" with "weak integration of rural, regional and sectoral policy design... and a complex, segmented delivery system at both national and local levels". It went on to say that "Centralisation and the lack of adequate bottom-up participation to rural policy hamper the design of measures adapted to the different parts of rural Scotland" and that "Scotland needs a distinct, integrated rural development policy with a decentralised, area-based delivery system... a stronger co-ordination of sector and territorial policies... and reinforced partnership, place-tailored approaches".

Then in 2014 SRUC called in its Rural Scotland in Focus report for an over-arching vision and strategy for rural Scotland. During the Land Reform Bill discussions there were questions raised as to what success looks like – we would contend that these questions are in part due to the lack of clear vision for rural Scotland.

Thus we would suggest that the situation outlined in 2008 persists in 2016, and work such as the Land Use Strategy only goes part of the way in addressing the issue.

Local decision making in rural areas

Local democracy in rural Scotland, and in particular issues regarding the operation of rural community councils, is in our view an issue which should be explored in the next Parliamentary session. Like other stakeholder we do not believe that this issue

was adequately addressed through the Community Empowerment Act and would suggest failure to address problems may impact detrimentally on areas such as community engagement, community planning, locality planning and delivering sustainable development.

Payment for ecosystems services

There is considerable appetite amongst landmanagers to progress the payment for ecosystems services (PES) agenda. The delivery of non market public goods such as natural flood management must be moved on from academic and policy discussions to a workable framework as soon as possible. We would therefore suggest that PES or Natural Capital features in the workplan of the successor Committee.

Written submission from the Scottish Fishermens' Federation

The Scottish Fishermen's Federation is grateful for the opportunity to contribute to the Legacy Meeting of the Committee on 2 March.

For the Scottish fishing industry during the current session several landmark pieces of legislation were scrutinised, including Scotland's National Marine Plan. This enabling legislation contributed to a more coherent approach to planning in the environment that our industry depends upon. While not every demand from the industry was met, in our opinion the outcome was fair and we can quote the example of Submarine cables policies as positive. It is assumed that the plan will be refreshed from time to time.

Priorities for successor committees have been requested and we have one of immediate importance: Marine Protection legislation, particularly that applying to Marine Protected Areas (MPAs). During this session, there was a curious mix of a run of success, followed by failure at the last hurdle. Scottish Government put in place a competent, transparent and well-consulted process to select and designate MPAs, but after a consultation, Ministerial decisions on a small number of areas were, in our opinion, illogical and neglectful of one area of Ministerial responsibility.

The issue of the small disputed number of MPAs was scrutinised by the RACCE and we were disappointed by the results, in that, again in our opinion, solid evidence as to the socio economic effects of the legislation was not tested sufficiently.

Finally, at the end of this session, the SFF recognises the extremely heavy workload that was dealt with by the Committee. We offer departing and returning members our best wishes for the future, and for future work in the RACCE, respectively.

Written submission from Scottish Environment LINK Marine Group

INTRODUCTION

Scottish Environment LINK's Marine Group welcome the opportunity to provide recommendations for the RACCE Committee legacy report. The previous session of the Scottish Parliament has been historically significant for Scotland's seas, with the passing of the Marine (Scotland) Act 2010 and subsequent delivery of 30 new nature

conservation Marine Protected Areas and a National Marine Plan. However, this welcome journey to greater sustainability and improved conservation at sea is only just beginning, and there is some way to go yet to secure clean, healthy, safe, productive and biologically diverse oceans and seas.

1. Completing the Marine Protected Area network

The RACCE committee is to be commended for its work gaining evidence from all stakeholders, including LINK and its members, on nature conservation Marine Protected Areas (ncMPAs) and for supporting the Scottish Government recommendations of 30 sites, eventually designated in July 2014. These make a substantial contribution to Scotland's, and indeed the wider UK, contribution to the legal requirement of establishing an ecologically coherent network of well-managed marine protected areas. However, the job is not yet done and we expect the Scottish Government to consult on and designate a further four ncMPAs, 14 seabird EU Special Protection Areas and the EU Special Areas of Conservation necessary for harbour porpoise. A review of the entire network will also take place within the next session and, even with the above sites designated, further sites will likely still be needed to complete the network. **We urge the RACCE Committee to continue to support the delivery of an ecologically-coherent MPA network and to scrutinise the Scottish Government review of the entire MPA network required by the end of 2018 under the Marine (Scotland) Act 2010.**

2. Ensuring Marine Protected Areas are well-managed

We were pleased that the RACCE Committee supported the Scottish Government's proposals for managing fishing in the most vulnerable tranche of inshore ncMPAs and SACs. We supported the transparent and inclusive consultative process that Marine Scotland carried out, including detailed stakeholder workshops and multiple drop-in sessions, and therefore were disappointed by the delay in getting the secondary legislation in place to protect the most vulnerable features from the most damaging forms of fishing. Whilst we support the measures for most of this first tranche, we are concerned that management proposals for some sites have been over-compromised in the face of opposition from some parts of industry. It is therefore important that these sites are closely monitored in order to inform adaptive management should, as we fear, some protected features remain at risk of continued deterioration. With fisheries management measures still to be consulted on for the second tranche of inshore ncMPAs and SACs, and yet to be confirmed for offshore ncMPAs and SACs, it is crucial that effective management measures are put in place that ensure those sites contribute to the much-needed recovery of the health of Scotland's seas. Potential benefits arising from well-managed MPAs, in addition to protecting the intrinsic value of marine biodiversity, include opportunities for sustainable fishing and coastal and eco-tourism. **The RACCE Committee should review management proposals put forward in secondary legislation by the Scottish Government and support those that fully recognise all potential benefits to society and economy.**

3. Ecosystem based Regional Marine Planning

Thanks in no small part to RACCE scrutiny, Scotland now has a National Marine Plan to help guide and ensure the sustainable development of Scotland's precious

marine waters. Effective delivery of the marine ecosystem objectives (and indeed social and economic objectives) in the National Marine Plan requires well-constituted, suitably run Regional Marine Planning Partnerships that deliver ecosystem-based Regional Marine Planning, rather than planning driven from sectoral silos. All the benefits we enjoy from the sea, whether food, energy, recreation or our fundamental wellbeing, rely on a healthy, well-functioning marine ecosystem. Scotland's Marine Atlas makes plain that this is currently not the case. In order to get on course to a sustainable future, Regional Marine Plans must therefore spatially and sustainably guide development *with the grain of the ecosystem*, such that carrying capacities are identified and respected, environmentally sensitive and important areas such as fish and shellfish nursery grounds, migration runs and good examples of wild areas are kept free of inappropriate development and opportunities for marine ecosystem enhancement are actively identified and encouraged. By 2020, within the next Parliamentary session, Scotland must also contribute to adjacent seas achieving Good Environmental Status under the EU Marine Strategy Framework Directive (MSFD). **We would therefore encourage the RACCE Committee to keep close track of Regional Marine Planning progress, supporting plans that deliver sustainable development aims of a just society living within environmental limits, and as the 2020 MSFD target approaches conduct an inquiry into whether progress is on course to meet it.**

4. Inshore Fisheries Reform

The MPA management process has shone a welcome light on the many challenges facing the management of inshore fishing in Scotland. Our ongoing concerns include gear conflict and the ecological footprint of some of the most damaging forms of fishing (when in sensitive areas) such as scallop dredging and *Nephrops* ('prawn') trawling. The Cabinet Secretary made clear at the most recent Inshore Fishing Conference in Inverness that the current inshore fishing legislation is not up to the job of the 21st Century challenges ahead. As we have repeatedly advocated for over at least ten years, spatial management of inshore fishing, particularly of scallop dredging and *Nephrops* trawling, is urgently needed to ensure protection of vital nursery grounds and fragile seabed habitats *wherever they occur*, and crucially, to ensure the long-term sustainability of these fisheries. In some areas, the environmental limits of other forms of fishing, such as creeling, also need to be addressed. **We urge the RACCE Committee in the next session to support progressive, ecosystem-based inshore fishery management to deliver equitable and sustainable access to this 'public good' and thereby ensure the long-term health of both stocks and the habitats they fundamentally rely upon.**

5. Suitable resourced research and monitoring strategy

Much of the controversy around MPA management could, we feel, have been avoided if there was more evidence from Scotland of the benefit of protecting biologically diverse, fragile seabed habitats such as living reefs and beds from the most damaging activities. We are seeing welcome evidence from the Lamlash Bay Community Marine Conservation Area of what happens when seabed is left alone: more young scallops and richer seabed communities of seaweeds, sponges, sea fans and all the myriad species they support. The establishment of properly protected areas of sea should be a win-win for conservation, coastal communities and sustainable commercial and recreational fisheries. The establishment of 30 new

ncMPAs provides a once-in-a-generation opportunity to establish research and monitoring programmes that can demonstrate the benefits of effective marine conservation measures. **We encourage the RACCE Committee in the next session to ensure the Scottish Government suitably resource marine research and monitoring to provide evidence of conservation benefits and inform sustainable management of MPAs, an investment in the future health of our seas and the socio-economic benefits they support.**

The Scottish Environment LINK Marine Group comprises the following member organisations;

Hebridean Whale and Dolphin Trust	Scottish Ornithologists Club
Marine Conservation Society	Scottish Wildlife Trust
National Trust for Scotland	Whale and Dolphin Conservation
RSPB Scotland	WWF Scotland
Royal Zoological Society of Scotland	

Written submission from Scottish Crofting Federation

Crofting priorities

These priorities were identified by the Scottish Government Crofting Stakeholder Forum and were corroborated by the Future of crofting conference held in Inverness 3rd December 2015. They were sent to the minister for crofting Dr Aileen McLeod. SCF would like to see these priorities taken forward into the next session.

Simplify Crofting Legislation

Crofting legislation needs to be made fit for purpose. 126 items have been identified as problems and anomalies in the legislation. They are collated in The Sump, which needs to be actioned. This can only be done effectively with a new Act. A panel of experts – practitioners and stakeholders – should be given the task of developing the bones of a new Act and it should be left to crofting accredited lawyers to write the Act.

Make crofts available

There are many people who want to come into crofting and crofting needs in-comers – especially young folk. The Crofting Commission must be given the resources to follow up on the annual census and to bring existing crofts back into use and made available for in-coming crofters. Simultaneously new crofts must be created as it is recognised that making existing crofts available is a long-term project. Consideration must be given to extending crofting legislation beyond the existing crofting areas, and creating new crofts in both existing areas and beyond.

Increase Affordable Housing

A considerable step has been taken by SG in reviewing and upgrading the Croft House Grant Scheme. This is to be applauded. But we can do more to help new entrants / crofters get access to affordable housing in rural and island communities by reinstating the loan element the scheme used to have. The old Croft Building Grant and Loan Scheme (CBGLS) was an extremely effective way of using public money to increase rural housing (several academic studies have shown this to be the case). We need the CBGLS back.

Development of Crofting

There must be a funded lead body on crofting development. When the Crofting Commission lost the remit for crofting development it was not passed to another body to take responsibility. HIE took responsibility for 'crofting community development'. This is not the same thing. There must be a body, HIE even, given ministerial direct to take responsibility for crofting development.

Financial Incentives

Funding under the Common Agricultural Policy (CAP) pillars 1 (Basic Payments) and pillar 2 (SRDP) are the main support mechanisms for agriculture and rural development. It is essential that current and future policies have a positive impact on crofting. All aspects of the CAP needs to be 'croft-proofed'.

Written submission from SRUC

1. Land Use Strategy

Examining how the Land Use Strategy (LUS) and its principles will *actually* be integrated into wider Scottish Government policies. The LUS could and should be the means by which the Scottish Government's Economic Strategy is achieved with respect to land and water. But currently few, if any, other Scottish Government policies appear to be taking the LUS into account.

2. LFASS replacement and wider issues of CAP implementation:

a. The replacement of LFASS with Areas of Natural Constraint (ANC):

- implications of payment redistribution for the farming industry;
- identifying the extent of wider public benefits from ANC support;
- implications for large-scale ecological restoration (also called "rewilding");
- potential implications for delivery of "Scotland's Wild Deer: A National Approach (WDNA) 2015-18 Action Plan".

b. CAP implementation, including:

- Delays and cost of implementing CAP Futures Programme;
- The Audit Scotland review of the CAP Futures Programme (to be published May 2016; see Appendix 1 for more information);
- Impacts of delayed 2015/16 CAP direct payments on farming sector;
- Impacts of delayed 2015/16 CAP direct payments on ancillary industries, consultancy services, companies offering apprenticeships, etc.
- Impacts of LEADER and other SRDP funding delays, etc.
- Impacts of regionalisation on direct payments;
- Implications of greening and gold plating.

3. Devolution and local democratic initiatives, including through community energy and community broadband schemes:

a. Rural aspects of devolution and local democratic initiatives, specifically: Rural Parliament (October 2016); Scotland Bill (e.g. implications of devolution of Crown

Estate and energy efficiency/fuel poverty measures); spatial variations in national initiatives, e.g. Participatory Budgeting; Islands Bill.

b. Community energy and community benefit funds:

- Unevenness of access to community benefit funds across Scotland and implications of this for unequal spatial development in rural areas;
- Variation in local planning departments and support for community renewables. Some Local Authorities are more supportive than others (research indicates considerable variation in planning approval rates across the different councils in Scotland for community renewables but also in terms of formal and informal support).

c. Rural Broadband:

- Continued lack of Next Generation provision;
- Assumptions around community readiness to harness community-led initiatives; increasing inequities between those communities able to do so and those not.

4. Hill farming's contribution to wider rural economy and social fabric of rural areas (DMc):

Recommendation from Workshop on the Future of Hill Farming (see Appendix 2 for programme): *There is a need to gain a better, up-to-date understanding of hill farming's contribution to both the wider rural economy and the social fabric of rural areas.* The Scottish Government is interested in gaining such a better understanding. Although the new Areas of Natural Constraint designations will be based on biophysical constraints, Scottish Government is interested in gaining additional socio-economic evidence within which to set the ANC wider context. Scottish Government is currently developing their evidence base for ANC, but once this is complete in early 2016 they will meet in April 2016 with Prof Davy McCracken and colleagues from SRUC to investigate focus and funding potential for a study on hill farming's contribution to *local economies, infrastructure and social fabric*.

See also: <https://www.linkedin.com/pulse/what-future-farming-scotlands-mountains-davy-mccracken>

5. Resilience of the farming sector

a. Education and training of future generations:

The National Strategy for Land-based Education and Training in Scotland (NSLBETS) 2015¹ highlights a number of key priorities for education and training in Scotland and furthermore recognises there is an ageing workforce and a need to upskill existing staff in the sector as well as attracting new entrants. The Land Based Sector plays a key role in supporting the Government's priorities within the Food and Drink, Health and Well Being, and Tourism Sectors. The *Developing Scotland's Young Workforce* agenda provides an opportunity to promote career pathways within

¹ http://www.sfc.ac.uk/web/FILES/ReportsandPublications/national_land_based_strategy.pdf

the land-based industries, through partnership working between the school and college sector. The ultimate aim is to ensure a sustainable workforce which also attracts new entrants from rural and non-rural backgrounds which in turn will support the rural communities of Scotland. Changes in funding in relation to Skills Development Scotland (SDS) contribution rates for apprenticeship programmes and changes to core funding to education providers could have a detrimental impact on this agenda.

b. *How best to encourage new Entrants into farming*, including joint venture farming in the context share farming.

c. *Encouraging innovation*: exploration of how Scottish Government policies stimulate innovation in the agriculture/rural sector, including in the area of enhancing food security.

Appendix One

The Audit Scotland report can be found here:

http://www.audit-scotland.gov.uk/uploads/docs/report/2016/pb_cap_futures.pdf

Appendix Two

The draft programme for the event can be found here:

<http://www.nfus.org.uk/system/files/HFC%20programme%20Sept%202015%20draft.pdf>

Written submission from the Crown Estate

Thank you for the opportunity to provide written evidence in advance of the 2 March.

We manage a diverse portfolio in Scotland which includes four rural estates, mineral and salmon fishing rights, about half the foreshore and almost all of the seabed.

The Crown Estate Act 1961 Act requires the Commissioners to maintain and enhance the estate's value and the return obtained from it, but 'with due regard to the requirements of good management'. In practice, this requires us to operate a commercial business. We make sure that the land and property we invest in and manage are sustainably worked, developed and enjoyed to deliver the best value over the long term. To meet these obligations, we have taken an approach that grows the value of assets over the long term and on a basis which is economically, socially and environmentally sustainable.

Our interests, experience and expertise therefore cover many of the themes identified as legacy issues by the Committee. We would be happy to provide evidence to the successor committee on these matters. Our recent experience may be of particular value in helping to inform discussions of the successor committee on the following:

- **Land reform and land use:** We support the discussion and debate around land ownership and use. We are fully committed to ensuring that the land we manage is done so in accordance with the principles of best practice. Transparency of ownership and engaging with communities are areas that we have worked

extensively on for many years. We seek to support opportunities to develop community land interests where the right capacity, skills-base and resources exist. Ownership rights come with extensive responsibilities in respect of protection of the environment, promoting sustainable economic development, recreational access, public engagement, partnership working and recognition of community interests. In some cases, outright community ownership may not be the most suitable option. **From our experience, we believe that there is an opportunity to promote strong and effective models of collaboration between owners, communities and occupiers in all sectors based on long term planning.**

- **Aquaculture:** Farmed salmon is an important export market and a vital component of Scotland's economy. Our role is to grant rights for approved and consented fish farm developments. Importantly, we also invest in research and development to support the industry to work sustainably, efficiently and improve stock performance. With shellfish, we recently completed our five yearly independent review of our shellfish lease terms, undertaken in consultation with industry, and we are pleased that our approach and the outcomes of the review were welcomed by industry leaders. We would suggest ongoing, collaborative scrutiny of industry governance is key to ensuring its standard of quality and scope for growth. We would like to see continued support for research and development, with this reflected in government policy. **In our view, improved, collaboration between aquaculture and capture fisheries is a key priority for government to help maximise productive use of the marine environment.**
- **The economic sustainability of coastal communities:** As the Committee is aware, we have been working with communities on locally-driven developments that offer economic and social benefits. A number of these have featured marine leisure and tourism which, as the recent marine tourism strategy indicates, offers significant potential to boost coastal community economies. **We believe that this local management model is capable of wider application and could help address some of the challenges faced by both island communities and remote mainland communities.**
- **Scotland Bill:** While not listed as a legacy issue directly, the planned devolution of The Crown Estate through the Scotland Bill has the potential to affect a number of the issues identified. The Committee has taken evidence from The Crown Estate, and the UK and Scottish Governments along with other stakeholders on the implications of this change. The successor Committee may, subject to the passage of the legislation, wish to be kept informed about progress with the devolution process. **From our perspective, we are keen to ensure that these changes take place in a way that minimises any disruption to customers and stakeholders – and also protects existing expertise. We would be happy to provide further information and evidence on this as required.**

In recent years we have welcomed the opportunity to report orally to the committee on our work, based on our annual report. We will again be producing our report in June of this year and this will offer an opportunity to the successor Committee to continue this practice.

We hope that this information is helpful to members. May I take this opportunity to reiterate our appreciation for your continued interest in our work more generally, and would like to extend an open invitation to RACCE Members to visit any Crown Estate site to learn more about our work in Scotland. We will also endeavour to keep MSPs informed of our portfolio activity in their constituencies that may be of interest.

Written submission from Development Trusts Association Scotland

DTA Scotland is the national organisation for development trusts. We currently have 240 members in communities throughout Scotland, the majority of whom are located in rural and island communities. As such our suggestions for priority issues for successor committees focus on supporting community-led regeneration and community ownership.

1. Programmes and / or resources to build the organisational capacity of community anchor organisations (such as development trusts) which are fundamental to sustainable rural communities and community-led development.
2. Addressing the fundamental imbalance of support available to enterprising communities across rural Scotland, caused by the different remits of HIE and Scottish Enterprise.
3. Recognise that there is a growing body of knowledge and experience in rural communities throughout Scotland, and explore how this incredible resource could be more systematically exploited for the benefit of less experienced rural communities.
4. Explore how appropriate capital loans (interest free or low interest, patient capital payable over longer periods) could be made available to support community-led development, community enterprise and part fund community ownership in rural communities.
5. Find a solution to the ongoing problem of broadband access and quality in rural communities (and particularly the more remote rural communities) throughout Scotland.

Written submission from the Scottish Wildlife Trust

The Scottish Wildlife Trust welcomes the opportunity to submit evidence to the Committee to inform the legacy report. As requested, we present here a short list of five priority issues for successor Committees. We will present our views in greater detail at the scheduled Committee meeting on the 1 March 2016.

We request that the Committee notes the Trust's support for the submission by Scottish Environment Link Marine Group of which the Trust is an active member.

1. Implementing Sustainable Development Goal 15

The Sustainable Development Goals (SDGs) are a new, universal set of goals, targets and indicators that UN member states have adopted to help frame their agendas and political policies over the next 15 years. Scotland was an early signatory to the SDGs.

The Committee could usefully enquire into how the elements of the SDGs relevant to its remit will be implemented in Scotland. The Trust would particularly recommend a focus on Goal 15, namely to “*Protect, restore and promote sustainable use of terrestrial [ecosystems](#), sustainably manage forests, combat [desertification](#), and halt and reverse land degradation and halt [biodiversity loss](#)*”.

There are a further 12 targets under this goal which could form the structure of a substantial enquiry. If prioritizing, the Trust would recommend investigating targets 15.4 and 15.9 as these are perhaps the least developed in a Scottish context and need urgent scrutiny and momentum if we are to achieve them in the timescales agreed.

15.4 “*by 2030, ensure the conservation of mountain ecosystems, including their biodiversity, in order to enhance their capacity to provide benefits that are essential for sustainable development*”. This is important in the context of historic and ongoing degradation, through for example overgrazing and drainage, of upland ecosystems in Scotland,

15.9 “*by 2020, integrate ecosystems and biodiversity values into national and local planning, development processes and poverty reduction strategies, and accounts*”. This is important if we are to understand Scotland’s stocks of natural capital and the value of the services we derive from them and, more importantly, *could* derive from them in the future after restoration and sustainable management.

Target 15.9 is closely linked to Convention on Biological Diversity Aichi Goal A to “*Address the underlying causes of biodiversity loss by mainstreaming biodiversity across government and society*”. An enquiry into natural capital stocks and ecosystem service flows could be a joint enquiry with whichever Committee is responsible for the economy portfolio.

2. Climate adaptation aims agreed at COP 21 Climate Summit

In December 2015, at the United Nations Climate Change Conference (COP 21) world leaders reached a global agreement – The Paris Agreement - aimed at tackling climate change.² Article 7 regarding adaptation has the goal of:

“enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal referred to in Article 2.”

Under Section 53 of the Climate Change Act (Scotland) 2009, Scottish Ministers are already required to lay a programme before the Scottish Parliament on their objectives, proposals and policies in relation to adaptation to climate change. In light of the next review of the 2014 report - Climate Ready Scotland: Scottish Climate Change Adaptation Programme - due in 2016, the Trust believes it would be appropriate for the next Committee to scrutinise the progress of the adaptation programme in relation to the ambitions of Article 7.

² See: <https://unfccc.int/resource/docs/2015/cop21/eng/l09.pdf>

In particular we would encourage the Committee to enquire how so called 'Nature-Based Solutions' (NBS) could be systematically deployed in urban, rural and coastal areas as a cost-effective measure to make Scotland climate ready. Key to this will be the integration of NBS into agriculture, land use and planning policies.

3. National Ecological Network (NEN) and Article 10 of the EU Habitats Directive

The EU Commission is currently evaluating the Birds and Habitats Directives to ensure that they are 'fit for purpose'.³ From the consultation responses the emerging findings⁴ are that progress has been slow in Member States regarding the management of landscape features that improve the ecological coherence of the Natura 2000 network.

Article 10 of the EU Habitats Directive states:

Member States shall endeavour, where they consider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the Natura 2000 network, to encourage the management of features of the landscape which are of major importance for wild fauna and flora.

Such features are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems for marking field boundaries) or their function as stepping stones (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species.

Regarding implementation of Article 10, Scotland's 2020 Biodiversity Strategy has the ambition for delivering a NEN. However, it is very unlikely this will ever be achieved across Scotland unless it is integral to planning and agriculture policy (and associated subsidies).

The next National Planning Framework is under development now and will be published in 2019, it would be timely for the Committee to scrutinise progress towards achieving a NEN.

4. Sustainable Deer Management

Overgrazing and browsing by wild deer is perhaps the most significant driver of biodiversity loss and degradation in Scotland, particularly in the uplands.

The Trust commends the Committee on its 2013 enquiry into the impacts of deer management on natural heritage and its contribution to progressing sustainable deer management through the Land Reform Bill.

The 2013 enquiry highlighted the lack of progress by many deer management groups in producing and delivering responsible and sustainable deer management plans.

³ Fitness check see: http://ec.europa.eu/environment/nature/legislation/fitness_check/index_en.htm

⁴ See: http://ec.europa.eu/environment/nature/legislation/fitness_check/docs/consultation/Fitness%20Check%20final%20draft%20emerging%20findings%20report.pdf

We recommend the future Committee focuses on how deer management groups are acting – on the ground rather than on paper - to deliver the public interest.

The Trust would advise the Committee to ensure the assessments being conducted by SNH to inform the review, focus on action to reduce numbers and densities, rather than processes.

5. North sea decommissioning and nature conservation

Oil and gas has been a major industry in the North Sea for over 40 years. Operators are under legal obligation to decommission infrastructure once production has ceased and eventually over 470 installations, 10,000km of pipeline and 5,000 wells will have to be decommissioned. Additionally, drill cuttings will have to be dealt with and accumulated debris cleared. This will see significant activity in the North Sea over the next 30 years with industry forecasts estimating that £30-50 billion could be spent up to and beyond 2040 on the UK Continental Shelf.

Under current regulations it is estimated that over 90% of offshore installations will be entirely removed for re-use, recycling or disposal on land. The remainder, comprising very large steel and concrete structures can be considered for partial removal.

International obligations on the disposal of offshore installations are set out in OSPAR Decision 98/3. The legally binding decision prohibits the dumping and leaving wholly or partly in place of disused offshore installations, and thus introduces a presumption of full removal for re-use, recycling or final disposal of the installation on land

The decommissioning of offshore oil and gas installations and pipelines in the UK is governed by the Petroleum Act 1998, as amended by the Energy Act 2008. However, the Scottish Parliament has at least partial responsibility for nature conservation in Scottish waters so the Committee may wish to investigate:

- An assessment of how decommissioning is progressing in Scottish waters and its potential impact on Scotland achieving its targets under the Marine Strategy Framework Directive (MSFD)
- Options for using derogations under OSPAR for partial decommissioning which in some cases could mean reduced costs for operators whilst actually enhancing biodiversity.
- Options for placing operator savings from partial decommissioning into a 'National marine compensation fund' or similar for use in achieving MSFD objectives

Scottish Wildlife Trust

February, 2015

Written submission from Nourish Scotland

Priority Issues for successor committees

- **Food, farming and health Act**

Nourish Scotland, along with many partners in the Scottish Food Coalition, wants to see new primary legislation to underpin the transformation needed in Scotland's food system in order to tackle climate change, enhance biodiversity, maintain a sustainable fishing and farming community, improve health, reduce inequalities.

The Act would set out clearly the purpose of food policy in Scotland, specific measures to support that purpose (including stronger food governance), and a mechanism for assessing and reporting to Parliament on progress.

- **Sustainable Development Goals**

During the next Parliament, these goals should inform policy-making across all committees, and should be reflected in the National Performance Framework, community planning and so on. We suggest that one Committee should monitor the extent to which this is happening across the board.

- **Common Agricultural Policy**

Assuming that we remain part of the EU, we encourage the successor committee to be proactive in developing its thinking about Scotland's priorities for the CAP post 2020, as well as scrutinising implementation of the current programme.

In scrutinising implementation, for example as part of the midterm review in 2017, the Committee should look specifically at the impact of measures such as 'greening', the new advisory and knowledge transfer schemes and the organic action plan. Nourish Scotland welcomes the Government's ambition for Scotland to be a 'world leader in green farming' – but this will only happen if policies and spending are aligned with that goal.

- **Biodiversity 2020 and beyond**

Nourish welcomes the publication of the route map to 2020 and the reporting on progress. However, we would like to see more ambitious aspirations for biodiversity – including soil, urban and marine biodiversity – in the post 2020 strategy.

Written submission from Stop Climate Chaos

Stop Climate Chaos Scotland welcomes the opportunity to look back at the work of the RACCE Committee over the last Parliament and to contribute ideas regarding what any successor Committee should focus on in the next Parliament.

SCCS believes that the Committee must retain an *overview of progress* towards climate change targets, and make recommendations on policies which aim to achieve these. It must hold to account all sectors and Government Ministers for their role in delivering policies. We believe the successor Committee to RACCE must be the body in Parliament responsible for overseeing the Scottish Climate Change Act implementation in its entirety and considering overall progress.

Review

We welcome the work RACCE has done to scrutinise Scottish Government policies on climate change throughout this Parliament. The highlight has been the Committee's forthright work on scrutinising the draft RPP2 in 2013 and reviewing its progress in 2014. This recognised positive aspects of the plans for climate action, but also criticised and identified gaps in policy and made valuable recommendations, as the following quotes from RACCE's report on RPP2 show:

- ***'As Scotland failed to meet the annual emissions abatement target for 2010, the final Second Report on Proposals and Policies must provide a framework that ensures future annual targets are met'.***
- ***'..recommends the Scottish Government ensure all proposals and policies outlined in the draft RPP2 are implemented'.***⁵
- ***'The Committee encourages the Scottish Government to consider what more can be done to meet the targets, what measures can be prioritised, what actions can be expedited, and how the second Report on Proposals and Policies can be more effectively implemented.'***⁶

We welcome the RACCE Committee's successful championing of land use policies which can help Scotland meet its climate targets, e.g. RACCE welcomed ***'the inclusion of peatlands in the draft RPP2 and believes this is an area in which the Scottish Government could provide a global lead.'*** However, as recommended above, we seek that the successor Committee takes responsibility to champion and scrutinise all climate policies and takes an overview of all action on climate change by Government.

We also recognise the work of the Committee in scrutinising Budgets presented to Parliament and showing where funding of climate change mitigation is inadequate or opaque, e.g. *'One consistent area of concern has been the level of funding available for land use climate change measures and the effectiveness of some of those initiatives, including concern about relating RPP policy areas...'* and *'Tracking Scottish Government spending on climate change policies needs to be made clearer and more transparent'*⁷. The RACCE Committee's work encouraging other Committees to consider climate change in their Budget scrutiny has been most welcome.

Priorities

1. Annual emissions targets under Climate Change (Scotland) Act 2009

In 2016, annual greenhouse gas emissions reduction targets for 2028-32 will be set by the Scottish Government, following advice from the UK Climate Change Committee. Any new targets should be viewed in the light of objectives set by the Paris Agreement at the end of 2015. The Paris Agreement set a new course for global

⁵ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/61495.aspx>

⁶ <http://bit.ly/1qZJe4x>

⁷ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/96153.aspx#e>

action to halting climate change and significantly agreed to aim to limit global temperature rise to below 1.5°C.

SCCS recommends that the successor committee scrutinises setting of new emissions annual targets and any review of annual targets in the life of the Parliament.

2. Annual review of progress towards meeting annual targets

The Scottish Government reports annually on actual progress in meeting emission targets. In the past, Government has addressed missed targets by introducing policies to bridge the gap and bring future emissions back onto target.

SCCS recommends that the successor Committee reviews the progress each year towards meeting the appropriate annual target, scrutinises Government policies introduced to 'plug the gap', and makes recommendations on additional policies needed to meet any shortfall.

3. RPP3

In 2016/17 the Scottish Government will consult on the proposals and policies it aims to use to meet the annual targets up to 2032 and existing targets to that point. This is a requirement of the Scottish Climate Change Act.

SCCS recommends that scrutiny of Government's draft third Report on Proposals and Policies be a high priority for a successor committee. We also recommend that scrutiny includes an inquiry into potential for greater action on behavioural change in meeting Scotland's climate change targets.

4. Scottish Budget

Action on climate change is a cross-governmental issue – all Ministers have a responsibility to deliver action through policies and spending which delivers emission reductions. However, Budgets laid before Parliament in the past have not thoroughly and transparently indicated how spending plans will deliver climate action or how they relate to policies in the RPP or RPP2.

SCCS recommends that a successor to the RACCE Committee sees it as a priority to scrutinise future Budgets and to call Cabinet Secretaries and Ministers across relevant portfolios to account on the spending towards meeting Scotland's Climate Change targets.

5. Land Use Strategy

Clear leadership is essential if rural businesses and the food sector are to become low carbon, climate-proof and sustainable. In 2016, the next Scottish Government is due to publish a second Land Use Strategy (the LUS), a requirement of the Climate Change (Scotland) Act 2009. This must influence a reduction in emissions from the way Scotland's rural land is used and managed. As it did with the first LUS, Government will also develop an LUS Action Plan setting out activities to meet the strategy's objectives. The RACCE Committee has a responsibility to use its expertise on rural affairs to scrutinise the LUS and how it is implemented at a regional level.

SCCS recommends that a successor Committee scrutinises Government's LUS and Action Plan and makes links to the Land Reform Bill, the RPP3 and other rural land policies. The Committee should make recommendations towards better regional LUS plans and strong policies which deliver emissions reductions throughout the land use sector: agriculture, forestry and peatlands.

Written submission from WWF Scotland

Summary

Suggested five priorities for the RACCE Committee in the next Scottish Parliament period:

Climate Change Act Progress:

With four missed annual targets and 17.5m more tonnes of CO₂ emitted than allowed by those targets, RACCE (or its successor committee) must lead parliamentary scrutiny and continue to regularly reviewing Scotland's progress against the Climate Change Act. The Committee should encourage the next Scottish Government to bring forward new policies, more detail on existing commitments and seek reports from the Scottish Government under Section 36 of the Climate Change Act.

Annual Targets for 2028-2032:

RACCE (or its successor committee) will have secondary legislation come before it in the new Parliament to set annual targets under the Climate Change Act for the period 2028-2032. The Scottish Parliament should only accept targets set, under advice from the CCC, that take account of the 17.5m tonnes of excess climate change emissions to date.

Report on Policies and Proposals 3 (RPP3):

RACCE (or its successor committee) should take a leadership role in scrutinising the Scottish Government's draft RPP3 (expected in late 2016), ensuring other Scottish Parliament Committees actively engage and that it takes a holistic overview of the draft RPP. It is critically important that the final RPP presents policies that support an emission reduction path that accounts for the 17.5m tonnes of excess emissions to date.

Budget Scrutiny:

During this Parliament WWF Scotland has expressed frequent concern that successive Scottish Budgets have been inconsistent with the scale of transformation required by the Climate Change Act. Current attempts to mainstream climate change within budget scrutiny have been insufficiently successful, and RACCE (or its successor committee) must ensure that other Committees engage more and it takes responsibility for providing a holistic assessment of the alignment between the Budget and the Act. Weaknesses in the Scottish Government's climate change analysis of the Budget have not made the Parliament's job easier in this regard, during the current Parliament.

Governance:

The creation by the Scottish Government of a Cabinet Sub-Committee on Climate Change was a welcome development towards greater cross-Government responsibility for emissions reductions. RACCE (or its successor committee) should review the success of the Cabinet Sub-Committee during the next Parliament, and seek to scrutinise its work and leadership role more.

Review

During the period of the current Parliament the RACCE Committee has helped maintained a sustained focus on the issue of reducing Scotland's climate change emissions. Climate Change is an issue that cuts across portfolios and committees of the Parliament. RACCE has an important role leading the scrutiny of the implementation of the Climate Change Act and considering overall progress against the Act, as well as considering climate change in the other portfolio areas it is responsible for.

During the current Parliament, the RACCE Committee led a welcome cross-Committee approach to scrutinising the Draft RPP2 and made significant recommendations for improvement of the document, albeit not many were taken forward by the Scottish Government. More recently RACCE have written letters to the Minister calling for more to be done to meet targets⁸ and highlighting the need for further detail to understand what impact recent announcements might have on reducing climate change emissions⁹.

Looking ahead

WWF Scotland welcomes the opportunity to contribute ideas for RACCE (or its successor Committee) in the forthcoming Parliamentary term. Our five suggested priorities are as follows:

1. Scotland's ongoing progress against the Climate Change Act

Scotland has now disappointingly missed the first four annual climate change targets under the Climate Change Act and, equally, missed opportunities to transform Scotland for the better. With the pace of climate change determined by the total amount of cumulative emissions, Scotland has now emitted 17.5 more tonnes of CO₂ than allowed by the first four annual climate change targets set by the Scottish Parliament under the Climate Act. That is equivalent to a year's worth of climate emissions from Scotland's entire energy sector, demonstrating the scale of action needed to make up for past missed targets. This is particularly concerning as the scientific case for urgent action has only strengthened since the passage of the Act, and, similarly, the scale of international commitment and ambition has only strengthened, with the recent Paris COP21 agreement.

These targets have been missed for a number of reasons, including insufficient policy delivery and funding, as well as the changes to the historical emissions inventory that have taken place each year. The most recent target was only narrowly

⁸ Letter to the Minister, 26 November 2014 – see especially paragraph 13, <http://bit.ly/1oHoDSY>

⁹ Letter to the Minister, 9 December 2015, <http://bit.ly/1XMOkxa>

missed, which is disappointing, but shows that achievement of the target was possible with greater policy effort. The Scottish Government is still a long way away from having exhausted all of the policy options at their disposal.

New policies are needed to compensate for the 17.5m tonnes of excess emissions, to ensure we meet future annual targets, and to ensure the foundations for emissions reductions and a thriving Scotland are laid for the coming decades.

When an annual climate change target is missed, the Scottish Government is required by Section 36 of the Climate Change (Scotland) Act to produce a report for the Scottish Parliament “setting out proposals and policies to compensate in future years for the excess emissions” as “soon as is reasonably practicable” after October. This is in addition to the report that must be published each October (under Section 33) explaining why the target has not been met. Each year the Scottish Government has produced a report clearly labelled as a Section 33 report¹⁰. However, the Scottish Government has never, to our knowledge, produced a Section 36 report outlining compensatory policies.

This is despite the fact that the Scottish Government has, for example in 2014, orally announced some welcome new policies at the same time that there has been a Ministerial Statement on the climate target result. For example, in June 2015 a package was announced¹¹, including a commitment to make home energy efficiency a National Infrastructure Priority, a potentially transformational commitment, given that approximately 50% of Scotland’s climate change emissions come from heating. Section 36 reports would provide opportunity to Committees, including RACCE (or its successor) to explore these policies further. Because Section 36 reports have not been produced, the Scottish Government has not demonstrated to Parliament, with adequate analysis, that there are sufficient policies in place to compensate for the emissions gap that has opened up.

The Scottish Government has argued in response that it will fulfil its duties under Section 36 through the RPP3. WWF Scotland agrees with the view of RACCE¹² that this approach creates concerns and that Section 36 reports should be produced in future. This would help address concerns that the RPP2 has not been a live document that has flexed in response to the performance (especially under- or over-) of individual policies.

RACCE (or its successor Committee) should in the next Parliament:

- **Ensure that the next Scottish Government brings forward new policies to compensate for past emissions.** As the Committee responsible for overseeing the overall implementation of the Climate Change Act, RACCE has an important role to scrutinise whether sufficient policy is being brought

¹⁰ The Section 33 report for the most recent missed target (2013) is available here: <http://www.gov.scot/Publications/2015/10/8032>

¹¹ Scottish Government press release: <http://bit.ly/1HmSAh9>

¹² Expressed in this letter to the Minister (9 December 2015) here: <http://bit.ly/1XMOkxa>

forward across the board, including in areas which are also part of the remit of other Committees.

- **Ensure that the next Scottish Government brings forward further detail on the additional policies that have already been announced**, and what contribution they will make to emissions reduction¹³. For example, on the commitment to make energy efficiency a National Infrastructure Priority, there has been little further information since June 2015 on timescales and levels of ambition. WWF Scotland is of the view that an objective for the domestic sector of improving all homes to a level C EPC standard by 2025 is the minimum compatible with the Climate Change Act¹⁴.
- **Ensure that the Scottish Government produces Section 36 reports if future annual targets are missed**. There is a regular annual cycle created by the Climate Change Act (e.g. Ministerial statements each year in late spring and October), and it might be helpful if the RACCE Committee heard each year from the Minister early in the calendar year, when a Section 36 report might reasonably be expected to have been produced.

The Scottish Government states that it is on track to meet the 42% target by 2020¹⁵. However, there continues to be a danger that all of the annual targets along the way will be missed. The particular changes to the 1990 baseline that have taken place have made it more difficult for Scotland to achieve the annual targets (expressed in m tonnes CO₂eq) have also brought the 2020 percentage target closer. On this basis, we suggest that whilst the 2020 target has important symbolic power, the focus of the RACCE Committee (or its successor) in the next Parliament should continue to be on the annual targets.

2. Secondary legislation: Annual targets period 2028 - 2032

As required by the Climate Change Act, the CCC will advise on new annual targets for the period between 2028 and 2032 in March this year. The new Scottish Parliament will have to consider these as secondary legislation, soon after the election. **In order that Scotland stays within its ‘fair and safe’ cumulative emissions budget** through to 2050, and since the Scottish Government has committed to making up for the past 17.5M tonnes of excess emissions, **RACCE (or its successor) and the Scottish Parliament should only accept future annual targets that take account of the need to compensate for the excess emissions to date.**

The Paris Agreement has committed parties to limit warming to “well below 2°C above pre-industrial levels” and to “pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels”. The Agreement also incorporates a goal of emissions neutrality or “balance” between emissions sources and removals by “second half of this century, on the basis of equity...”¹⁶. This implies that Scotland, and other developed country parties, will have to go significantly further than the ‘at

¹³ Also expressed in the RACCE Convenor letter to the Minister, 9 December 2015

¹⁴ This objective is also supported by more than 50 major civic and business organisations in a joint statement: <http://bit.ly/1Ms1AE9>

¹⁵ See June 2015 Ministerial Statement: <http://bit.ly/1LEWBMf>

¹⁶ <http://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf>

least 80%' goal, potentially including negative emissions by mid-century. If anything this will require a tightening of the cumulative emissions budget. **RACCE (or its successor) Committee should review the annual targets for 2028-2032 put forward by the Scottish Government in light of this international context of increasing ambition and will.**

3. Development of RPP3 (Report on Policies and Proposals)

The development of the next Report on Policies and Proposals will be the most critical piece of work for the delivery of the Climate Change Act by the next Scottish Government. The Climate Change Act requires a 60 day period of scrutiny by the Parliament. The RPP is virtually unique amongst Scottish Government plans and strategies in that it is a truly cross-Government plan requiring delivery action from within almost all portfolios. Therefore RACCE (or its successor Committee) will need to lead a scrutiny process that involves other Committees as well.

The RPP3 will need to include new policies, in order that Scotland is put back on track for its future annual climate change targets, that the 17.5m tonnes of cumulative excess emissions (as a consequence of past missed targets) in past years are compensated for, and in order that Scotland enjoys the full economic and social benefits of its low-carbon transition.

In particular, WWF Scotland sees the need for more action in the transport sector (where emissions continue to languish at 1990 levels), in improving the energy efficiency of homes (which has multiple benefits and the emissions inventory from Scotland's homes continues to remain at the mercy of winter cold snaps) and in the area of renewable heat (which accounts for 50% of Scotland's emissions, but currently only 4% of generation is from renewable sources).

WWF Scotland considers that the joint approach taken to the Parliamentary scrutiny period of the RPP2 was effective within the constraints of parliamentary time available, involving as it did four committees working jointly in parallel. This was particularly effective in requiring various different Cabinet Secretaries and Ministers to engage with the Parliamentary process and take responsibility. **WWF Scotland would encourage RACCE (or its successor Committee) to act quickly after the election to secure the buy-in of the relevant other Committee convenors to such a joint approach, given that the Draft RPP3 may appear during 2016.**

However, in addition to looking at the emissions sectors within its remit, the RACCE Committee must also be the body within Parliament for scrutinising the overall delivery of the Climate Change Act, in this case including responsibility for the RPP, overall.

The Scottish Government has also been developing a new TIMES energy model to support the development of the RPP3. WWF Scotland warmly welcomes this evidence-based approach. It would be helpful if the future RACCE Committee sought a briefing on this model with Scottish Government officials, very early in the new Parliament, as it will be critical to the development of the RPP.

One of the real strengths of Scotland's Climate Change Act is the cross-party support it has enjoyed, in its passing by the Parliament and more recently in the

joint-agreement signed by the leaders of the five political parties represented in the Parliament. However, there has been less opportunity to develop cross-party support for the individual policies that deliver the emissions reductions required by the Climate Change Act. The next Scottish Government should take a leadership role in developing cross-party support for individual new climate change policies, as part of the development of a draft RPP3 and as part of the parliamentary scrutiny process for the RPP. Openness, during the development of the draft RPP will be important to this.

There can be some learning from where the RPP2 was not as successful as it could have been:

- Much of the policy effort in RPP2 was backloaded to the post-2020 period¹⁷. Unless RPP3 changes this, we will continue to miss early targets. This was a concern shared by both RACCE and ICI committees in their original scrutiny of the draft RPP2.
- WWF Scotland was disappointed that the RPP2 never become a 'living document', flexing in response to the performance of policies. It is important that an effective monitoring framework is developed and made available that improves understanding of the implementation of the RPP and allows all stakeholders to understand its delivery.

It would be helpful if RACCE (or its successor) made these points about the development and formulation of the RPP3, to the Scottish Government, before the draft RPP3 is published.

4. Scottish Budget and climate change

WWF Scotland has been concerned throughout this Parliament that the Scottish Government's budget has been insufficiently aligned with the Climate Change Act and the ambition of the RPP2, that the current approach to mainstreaming climate change within the Parliament's scrutiny of the Draft Budget has not been successful and that the information provided by the Scottish Government to aid the scrutiny of the budget is insufficient and not timely.

Across each of the years of this Parliament, WWF Scotland has provided evidence to various committees to support scrutiny of the Draft Budget. Each year, WWF Scotland has expressed concern that there is a mismatch between the requirements of the Climate Change Act and the RPP2 on the one hand, and the funding set aside in the Draft Budget on the other. This is particularly the case in capital budgets, where far too little is being invested in building the infrastructure of the future, that will assist Scotland's low carbon transition¹⁸.

Encouraging the next Scottish Government to bring forward new investments, that reflect the need to get back on track for achieving Scotland's annual

¹⁷ For instance, in transport the RPP2 provides for a 7,261 ktCO₂e reduction in emissions to 2020 and a 20,678 ktCO₂e reduction from 2021 to 2027.

¹⁸ Recent independent research found that only 50% of Scottish Government capital investment could be described as 'low carbon'. Download full report here: <http://bit.ly/1NEhR9V>

climate change targets, should be a priority for the RACCE (or its successor) Committee in the next Parliament.

During the course of the current Parliament, RACCE has encouraged a 'mainstreaming' approach to climate change in the Parliament's scrutiny of the Draft Budget. WWF Scotland is concerned that this approach has not yet been successful in providing strong and holistic scrutiny of the extent to which Scottish Government Budgets are consistent with the Climate Change Act.

Firstly, WWF Scotland is concerned that too few of the other subject committees have taken up the request of the RACCE Committee¹⁹ that they should report on climate change funding within their relevant budgets to the Finance Committee and to RACCE. However, notable exception should be made for the ICI Committee who have adopted climate change as one of their primary areas of focus during the most recent periods of budget scrutiny²⁰. If a mainstreaming approach is to be successful, **the other subject committees need to buy into undertaking more in-depth scrutiny of climate change aspects of successive Draft Budgets.** We would welcome attempts to find solutions to this, for example, there is not a consistent format of reports on Draft Budgets by committees and perhaps this might help.

Secondly, we are concerned that current Draft Budget scrutiny processes and timetables do not ensure that a Committee has responsibility for overview scrutiny of the entirety of the Draft Budget's consistency with the Climate Change Act. This is particularly the case when Scotland does not have sectoral targets and there is difficulty reading across between the RPP and the Budget (although this can be improved – see below). As things currently stand, RACCE is looking at climate change within the Rural Affairs etc. budget (which is of course important, given that land use is a significant emissions sector) but is not currently able to collate the views of the other subject committees on climate change (albeit, as above, we understand that we currently be hampered by a lack of engagement from other Committees). If a mainstreaming approach is to be successful, **a Parliament Committee** (and suggest that this be RACCE) **must, as a matter of course, each year pass judgement on whether the Draft Budget, as a whole, is consistent with the Climate Change Act and the RPP.** RACCE should publish such an opinion, once it has received information from other Committees.

For several years in a row, RACCE have called on the Scottish Government to produce its climate change breakdown ("Details of funding for climate change mitigation measures"²¹) alongside the publication of the Draft Budget, or at least alongside Level 4 figures. This year, the delayed publication of the 'funding for climate change mitigation' figures meant that individual committees, including RACCE, were unable to view this breakdown before they finalised their reports to the Finance Committee on the Draft Budget. This meant that it was left to the media to report on the figures, and there was not opportunity for the Parliamentary process to consider either the headline figures, which showed a planned 13% reduction in climate change funding, or to scrutinise the Scottish Government's response.

¹⁹ See letter from RACCE Convenor on 2016/17 budget here: <http://bit.ly/1XMOQex>

²⁰ See here for further detail: <http://bit.ly/1oB5dPe>

²¹ For 2016-17 Draft Budget related document, see here: <http://www.gov.scot/Resource/0049/00492185.pdf>

It is therefore critical that RACCE (or its successor Committee) ensures that the Scottish Government fulfils in future the RACCE recommendation that climate change funding figures are published alongside the Draft Budget. Agreement of new protocols for Budget scrutiny with the new post-election Finance Committee are an ideal opportunity to do this. The utility of these figures would also be improved if they read across in some way to the different areas of the RPP, making clear which budget lines delivered against which policies and proposals in the RPP.

The Scottish Government currently publishes a climate change assessment of its Draft Budget but this is based solely on the direct carbon impacts of investment, not their total indirect life-cycle impacts. This distinction is particularly important for infrastructure investments, which will still be shaping how we live in 2050. Through the Spending Review, Infrastructure Investment Plan and annual budgetary process, **RACCE or its successor committee should ensure that the next Scottish Government assesses all capital spending decisions over their full life cycle** so that they are consistent with the low carbon future we are aiming towards.

5. Governance issues in relation to the delivery of the Climate Change Act

A welcome development during the current Parliament was the establishment of the Cabinet Sub-Committee on Climate Change, reflecting the cross-Government nature of action to reduce Scotland's climate change emissions. We hope that the next Scottish Government continues this sub-Committee. **WWF Scotland would like to suggest that RACCE (or its successor Committee) should seek to engage more with the Cabinet Sub-Committee during the next Parliament. For example, by seeking update from the Chair of the Sub-Committee, who is currently the Cabinet Secretary for Rural Affairs, Food and the Environment.**

RACCE (or its successor Committee) should also continue to engage with the Committee on Climate Change, the Scottish Government's independent advisers on climate change. For example, through seeking oral updates from the Committee, and through utilising the annual progress report that the Committee produces.

Written submission from Friends of the Earth Scotland

Future Priorities

1. **Budget process and climate change** - the Committee should press the Government to improve both the annual carbon assessment of the draft Scottish Budget and the ability to read across from the Budget to the current Report on Proposals and Policies (RPP), so that a clear picture is possible of whether the proposed budget will deliver on the plans in the RPP. The current carbon assessment process is laughable, drawing such a limited boundary around its assessment that the Forth Replacement Crossing looks like a better investment in carbon terms than the Borders Railway, when the opposite is obviously the case.
2. **Development of RPP3** - the third Report on Proposal and Policies will be developed over 2016, with a draft due at the end of the year. This is the masterplan that shows how Scotland will meet its climate targets. The

Committee can play a vital role in ensure that the process for developing the RPP is robust, interrogating the results of modelling of the future carbon emissions and examining the distribution of emissions-reduction effort between different sectors.

3. **Monitoring of RPP3** - when RPP3 is complete there will be a need for strong annual scrutiny to ensure that the measures it contains are being delivered on time and with the predicted effectiveness in reducing carbon emissions.
4. **Monitoring action on air pollution** - currently the most widespread impact of an environmental problem on human health is caused by urban air pollution, with 2,500-3,500 deaths a year attributed to this source and more than 30 pollution zones across Scotland where levels of air pollution exceed agreed health standards. The Government has a new Cleaner Air for Scotland strategy with a number of challenging timescales and significant resource requirements, as yet uncommitted. The Committee should lead work with the committees which cover transport policy, planning and local government to ensure that the Government's strategy is delivering as promised and is adequate to deliver on the aim of clean air by 2020.

Written submission from the James Hutton Institute

1. AgriTech – the investment in new technologies and how they may change rural business and livelihoods in the future
2. The relevance and importance of the Sustainable Development Goals to Rural Scotland.
3. The uses to which our land should be put to meet multiple objectives in the future and the role of nature based solutions for land management (natural flood management)
4. Reviewing Scotland's options for reducing GHG emissions from the land sector
5. Relevance of the circular economy for rural Scotland in relation to 'localisation'

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Written submission from RSPB Scotland

Improving existing laws through better scrutiny and improved implementation

Introductions

As we approach the close of this parliamentary session, we understand that the Scottish parliamentary committees will be reviewing their achievements over the past five years and setting out recommendations for the next committees. Recognising that the new committees may be reformed according to portfolios, scope and topics, we have grouped our own recommendations into 'action' headings of Review, Continue and New. With this structure we intend this Policy note to apply to several committees, rather than only of that committee covering the environment portfolio.

The next parliamentary session, will encompass the first major deadline targets of the Climate Change (Scotland) Act 2009 and the Biodiversity Strategy, both of which have crucial 2020 targets. In this context, we hope our recommendations will be viewed in a manner of aiding the Scottish Parliament and Scottish Government in reaching and even surpassing these targets and achieving better scrutiny and implementation of truly world leading legislation.

REVIEW

A new parliamentary session allows an opportunity to review and rethink process and procedures. We recommend the parliament adopting a more innovative and in-depth manner of gathering evidence which makes better use of Scotland's civic stakeholders, allowing new voices to be heard in parliament predominately local communities and more transparency over how decisions are reach about who is called to give evidence. The parliament could expand over and above its current evidence session format to incorporate seminars and workshops or co-opt experts where appropriate.

It is also important to review and reflect on existing legislation to gauge its effectiveness and understand what is left outstanding. We recommend committees prioritise scrutiny of implementation and achievement of existing legislation, for example the Marine (Scotland) Act 2010, the Wildlife and Natural Environment (Scotland) Act 2011 and European legislation on invasive non-native species. Biodiversity legislation has been severely under-scrutinised over the last few years and we recommend that meeting the 2020 and 2030 Biodiversity targets be prioritised as core to the committee work programme.

Our next recommendation would be more scrutiny of the Sustainable Development Goals (SDGs) throughout all the workings of The Scottish Parliament. The Climate Change (Scotland) Act 2009 requires all public bodies to embed the principles of

sustainability in all their activities and decision-making procedures and at present this element has been absent from all Scottish Parliament Committee scrutiny and decision-making. In the framework of the SDGs, during the next parliamentary session, committees should review the performance of Scotland's public bodies, notably Scottish Natural Heritage, Scottish Environment Protection Agency and Marine Scotland.

Following the 2015 COP21 Paris Agreement, Scotland now faces the task of cutting carbon emissions, transitioning to a low-carbon society while heating homes. Now is the time to review Scotland's energy supply and security with a specific focus on demand management and efficiency, and energy for transport.

2013 saw the collapse of Scotland's coal industry and shockingly revealed the estimated £200 million funding shortfall for restoration. We recommend that alongside any review of energy should be a scrutiny and assurance of restoration compliance in order to safeguard and restore damaged protected areas and close the loop of ecosystem services. It is also essential to avoid supporting approaches that risk locking Scotland into further unsustainable high carbon energy developments which subsequently create even greater environmental issues.

Outdoor learning is now an entitlement for every child through the Curriculum for Excellence and since its inception there has been improvement. Yet outdoor learning is still not embedded with many secondary pupils or pupils from deprived areas not gaining access to the outdoors. Learning for Sustainability is also a requirement through the Curriculum for Excellence but has had even less implementation than outdoor learning due to misperceptions of cost and space and lack of confidence from teachers. There is a worrying conflict between Education Scotland guidelines and the Scottish Qualification Authority in delivering both outdoor learning and Learning for Sustainability and we recommend that the parliament committee review and address this lack of implementation especially as addressing them would help reach numerous targets outlined in the 2020 Biodiversity Challenge.

CONTINUE

To understand how different policy instruments affect the environment, there must be renewed effort to scrutinise the Common Agricultural Policy (CAP), Biodiversity Strategy and Land-Use Strategy over the same period. This will allow committee to gauge the 'Policy coherence' of the Scottish Government Programme and ensure that public funds are not being spent on contradictory policy aims. These reviews and evaluations would place Scotland in an advantageous and informed position during the next round of CAP negotiations to deliver a system of public money for public good.

During the last parliamentary session significant progress has been made to create a strategic approach to Scotland's land use and the Land Reform Bill will hopefully continue that development. We urge for the next parliament to review and consider policy alignment especially when it comes to the Land Use Strategy. We would recommend a fully integrated Land Use Strategy with the National Planning Framework and National Marine Plan. As aforementioned, the SDGs are meant to be over-arching and all encompassing, and we believe the same approach could be applied to our existing land use policy and legislation.

At the start of this parliamentary session, tackling wildlife crime was very much unfinished business and while some progress has been made in the apparent reduction of use of illegal poisons, the killing of protected species and damage to vulnerable habitats continues. It is vital to avoid complacency after this promising start. We have welcomed the implementation of general licence restrictions, and prosecutions under vicarious liability legislation, as well as the publication of the Wildlife Crime Penalties Review. It is imperative that the recommendations made in the latter are implemented in the new parliamentary session. We also welcome the imminent Gamebird Licensing Review, and suggest that the legal, sustainable management of our countryside is a major component of the Land Reform agenda. This parliamentary session has seen the annual publication and scrutiny of the Wildlife Crime report, which we welcome. However, we would encourage the Rural Affairs committee to search beyond the government report in order to ensure that a complete picture of wildlife crime is given. This could be achieved by considering evidence from other stakeholders involved, such as Scottish Ornithologists Club, Scottish Gamekeepers Association or National Farmers Union Scotland.

2016 should welcome the reports from the Deer Management Groups and Scottish Natural Heritage on their review of progress in accordance with the Deer Management Planning. If progress is not found to have been met, a range of Land Reform Bill measures will come into effect. It is therefore important for the relevant new committee to take up where the current Rural Affairs, Climate Change and Environment Committee were and continue the scrutiny of deer management.

Although the Scottish government has almost completely designated the areas requiring special protection on land, too few sites are effectively and sustainably managed to meet the required targets. At sea, however there are major gaps in the network. 34 years after the deadline for implementation of the EU Birds Directive the necessary network of marine Special Protection Areas (SPAs) remains a patchwork. While the most important seabird breeding colonies on land are protected, there are no SPAs to protect the feeding areas of any of Scotland's internationally important breeding seabirds. Between a fifth and a quarter of protected sites are not in favourable condition therefore there is a need to reinstate the target of 95% of protected areas in favourable condition with Scottish Natural Heritage committed to developing a monitoring system and fully utilising the regulatory tools at their disposal to enforce legislation of ongoing damage to protected areas. In addition, more could be done to support adequate research and monitoring and improve data collection. This would not only better guide conservation action, but would aid the development and planning process by helping to inform the proper assessment of development proposals. Scotland's Protected Areas need to be made bigger, better managed and more joined to other sites through wider landscape conservation measures.

Scotland can be proud of its many achievements and assets, including its internationally important peatlands as carbon sinks and the much sought after expertise it has in peatland research and restoration. The National Peatland Plan and supporting steering and research groups are a significant achievement that will have a lasting legacy. The Peatland Action Grant and support given to forming regional partnerships is crucial in restoring our peatlands and as an important part of our natural capital this will bring long term costs savings. If investment is not

continued it will result in long terms costs arising from damaged peatlands and would send the wrong message to land managers about the Scottish Government's commitment. We would recommend that committees continue their support of peatland restoration, the Peatland Code and encourage the Scottish Government to continue to pursue such achievements with business involvement, particularly as COP21 Paris Agreement recognised the importance of peatlands as greenhouse gas sinks. Scotland needs to lead in providing sustainable growing composts based on recycled and renewable products and not perpetuate the outdated peat extraction industry.

NEW

To realise the Scotland we want to live in, we welcome appropriate and innovative policy change and legislation. While Scotland may be a world leader in climate change legislation and peatland restoration, the picture is the grim opposite when it comes to food. While the Scottish Government's Good Food Nation is a step in the right direction, the Scottish Government continues to consider food as an industry instead as a solution to many serious social inequalities and environmental problems. To ensure policy coherence, we recommend an approach to food with a focus on improving public health, respecting employment rights and enhancing environmental sustainability both on land and at sea. This could begin to be realised by investing in regional food economies, setting national organic public procurement targets, safeguarding and supporting all food sector workers, ensuring equitable and mutually beneficial trade relationships, and improve the planning system to ensure diversity of town centres as well a new public awareness drive. Currently, these issues span several committees, reflecting the government departments that cover food but do not work in conjunction. The Food Act would allow Scottish Government, local authorities, public bodies, employers and producers to transform the food system.

We would recommend that the National Planning Framework should require parliamentary sign off as opposed to the current situation where the Scottish Government is only obliged to regard the Scottish Parliament's views. This in turn would require an extended period of parliamentary scrutiny. We do recognise that these would require legislative changes, yet this recommendation ties into our overarching recommendation of more coherent, joined-up and integrated policy and legislation with increased effective implementation.

Written submission from the League Against Cruel Sports

The League Against Cruel Sports is a charity, established in 1924, that brings together people who want to stop cruelty to animals in the name of sport. Our current campaigns include hunting, snaring, dog fighting, racing animals and the badger cull. The League are pleased to have the opportunity to contribute to the Scottish Parliament's Rural Affairs, Climate Change and Environment Committee's Legacy Document, in which there are a number of important topics we wish to provide comment on, namely:

- The Review of the effectiveness of the Protection of Wild Mammals Act Scotland (2002)
- The Wildlife Crime Report

- The Land Reform Bill
- Snaring
- Shooting
- Hare Coursing
- Game bird rearing

The Review of the effectiveness of the Protection of Wild Mammals Act Scotland (2002)

The League is pleased to see that after we exposed very questionable behaviour by hunts operating in Scotland, the Government has established a Review of the effectiveness of the Protection of Wild Mammals Act Scotland (2002). We look forward to RACCE contributing to this process. If the Review recommends that the law needs strengthening we also look forward to working closely with the committee to commend changes that would ensure hunting foxes with hounds in Scotland would be finally consigned to history.

The Wildlife Crime Report

We welcome the introduction of the annual Wildlife Crime Report and the scrutiny it has generated around wildlife crime, and have been impressed by the work of the committee around the report. The first vicarious liability prosecutions have also been a step forwards in tackling raptor persecution.

We would have liked to have seen more progress on the extension of powers for the SSPCA and the Parliament's review of driven bird licensing in other jurisdictions. The League Against Cruel Sports was also hopeful that the wildlife crime sentencing review would have been completed more quickly than it has been, and we hope that this is considered by the committee and Parliament during the next session.

The Land Reform Bill

We were pleased to see the Land Reform Review Group's report highlight the environmental damage done by driven bird shooting, through muirburn, hill tracks and other harmful activities associated with shooting. We also produced a report authored by analyst Andy Wightman which highlighted other practices including tick mops and grouse mediation, and would like these to be considered by the committee in the next session.

While we understand the debate around land reform is ongoing, we were very pleased when the Scottish Government recommended that shooting estates lose their tax exemption, and hope that administrative issues around assessing the values of estates will not prevent this proposal becoming enshrined in law. We also very much hope that deer management controls will remain in the Land Reform Bill as it passes through Parliament, as poor management of herds by some estates exacerbates damage to the environment and leads to a larger number of deer required to be culled.

In general, we would like to highlight that the landowning system which is exploitative towards rural communities is also harmful to animals. The large empty spaces in Scotland were not always thus, and the League Against Cruel Sports would prefer

that local economies were supported by locally owned, sustainable businesses, rather than seeing shooting maintain a dominant position within the rural economy.

Snaring

The present Government introduced regulations covering the use and registration of snares. It also committed to review the effectiveness of the regulations sometime in 2016. The League looks forward to such a review and together with Onekind is ready to work with the committee to establish whether or not these regulations have sufficiently protected the welfare of animals in Scotland.

Shooting

The League Against Cruel Sports campaigns against driven bird shooting as we believe that shooting large numbers of birds for fun is inherently cruel. However, driven bird shooting overlaps into several other policy areas, and from that point of view it is quite a complex issue to address. Related issues include raptor persecution, where there is a well-known link between the killing of birds of prey and driven bird shooting.

Protection of Hares

One concern shared by many people across Scotland is the plight of the mountain hare, as we believe it is being culled in unsustainable numbers. While SNH has called for restraint, and we are pleased that hare coursing has been the subject of a recent police operation, we believe that it is time to review the relationship between shooting estates, hare culls and hare numbers.

Game bird rearing

Large numbers of birds, particularly pheasants, are reared in game farms and then released into the countryside at the start of their season. We welcome that the Animal Health and Veterinary Laboratories Agency (AHVLA) has, within the last session, produced a report on game bird farm conditions in Scotland. However, we also note that this report found that around half of game bird farms did not conform to guidelines, and that a large number of pheasants die every year on the roads in Scotland.

Working alongside the RACCE Committee

The League Against Cruel Sports believes that these issues could largely be dealt with by a licensing framework for shooting estates, which would mean that raptor persecution and other wildlife crimes, hill tracks, muirburn, deer management and other issues could be contained within one discrete system. Estates which acted irresponsibly could have licences removed or fines imposed, while estates that managed, for example, deer, responsibly, could be highlighted as an example to others.

We would welcome the opportunity to work closely with the committee regarding the points raised in the submission and would be happy to discuss any aspects of this submission in greater detail.

SSI cover note for:

- **Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016 (SSI 2016/68)**
- **Seed (Fees) (Scotland) Regulations 2016 (SSI 2016/69)**
- **Plant Health (Scotland) Amendment Order 2016 (SSI 2016/83)**
- **Wester Ross Marine Conservation Order 2016 (SSI 2016/88)**
- **Loch Sunart to the Sound of Jura Marine Conservation Order 2016 (SSI 2016/90)**

Procedure for Negative Instruments

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

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

Recommendation

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

SSI 2016/68

Title of Instrument:	Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016 (SSI 2016/68)
Type of Instrument:	Negative
Laid Date:	4 February 2016
Circulated to Members:	26 February 2016
Meeting Date:	2 March 2016
Minister to attend meeting:	No
Motion for annulment lodged:	No
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?	Yes
Reporting deadline:	21 March 2016

Delegated Powers and Law Reform Committee

4. At its meeting on 23 February 2016, the Committee agreed to draw the attention of Parliament to the instrument on reporting ground (i) as paragraphs (2), (6) and (7) of regulation 15 appear to be defectively drafted. The extract from the report can be found in Annexe A and correspondence from the Scottish Government can be found at Annexe B.

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

Purpose

These Regulations come into force on 1st July 2016 and extend to Scotland only. They revoke and replace the Seed (Registration, Licensing and Enforcement) (Scotland) Regulations 2006 (S.S.I. 2006/313).

EXPLANATORY NOTE

As per purpose above and including:

These Regulations implement in part—

- Council Directive 66/401/EEC on the marketing of fodder plant seed (OJ L 125, 11.7.1966, p.2298);
- Council Directive 66/402/EEC on the marketing of cereal seed (OJ L 125, 11.7.1966, p.2309);
- Council Directive 2002/54/EC on the marketing of beet seed (OJ L 193, 20.7.2002, p.12);

- Council Directive 2002/55/EC on the marketing of vegetable seed (OJ L 193, 20.7.2002, p.33); and
- Council Directive 2002/57/EC on the marketing of seed of oil and fibre plants (OJ L 193, 20.7.2002, p.74).

Regulation 3 makes provision for the making of applications for a licence by professional seed operators (as defined in regulation 2(1) to include seed merchants, seed packers and seed processors), crop inspectors, seed samplers or by a person in respect of a seed testing station.

Regulation 4 sets out the powers of the Scottish Ministers to grant a licence (with or without conditions), for a maximum period of 5 years, or otherwise to refuse an application for a licence.

Regulation 5 provides a power to vary a licence (whether or not at the request of a licence holder).

Regulation 6 provides a power to terminate a licence at the request of the licence holder.

Regulation 7 provides powers to suspend or revoke a licence (in whole or in part).

Regulation 8 provides powers to require training or the undertaking of examinations by crop inspectors or seed samplers or personnel at a licensed seed testing station.

Regulation 9 sets out the duties of an Analyst in Charge of a licensed seed testing station.

Regulation 10 requires the Scottish Ministers to maintain a register containing information about licences granted under these Regulations.

Regulation 11 sets out the powers and duties for licensed crop inspectors, licensed seed samplers and licensed seed testing stations in respect of charging fees in connection with the carrying out of functions under a licence.

Regulation 12 requires authorised officers appointed by the Scottish Ministers to carry out checks and supervise licence holders.

Regulation 13 provides for the taking of samples for the enforcement of the Seeds Marketing Regulations (as defined in regulation 2(1)).

Regulation 14 and Schedules 1 and 2 respectively provides for the form of certificates in respect of the taking of a sample or the results of tests of seeds under these Regulations.

Regulations 15 and 16 provide respectively for a right to make representations (to the Scottish Ministers) in respect of, or to appeal (to the Plant Varieties and Seeds Tribunal), against certain decisions taken or to be taken in relation to licences under these Regulations.

Regulation 17 enables the Scottish Ministers to exempt persons from compliance with any provision of these Regulations.

Regulation 18 enables the Scottish Ministers to extend the timescales for delivery of documents otherwise applicable under these Regulations.

Regulation 19 requires records to be kept under these Regulations for at least 6 years.

Regulation 20 makes provision for the service of notices.

Regulation 21 provides for applications, representations, notices and requests under these Regulations to be in writing (which includes electronic communications).

Regulation 22 and Schedule 3 consequentially amend some of the Seed Marketing Regulations (as defined in regulation 2(1)) and also amends the Seed Potatoes (Scotland) Regulations 2015. Paragraph 2(6) of Schedule 3 also amends the Cereal Seed (Scotland) Regulations 2005 to implement Commission Implementing Directive (EU) 2015/1955 (OJ L 284, 30.10.2015, p.142), which amends Annexes I and II to Council Directive 66/402/EEC on the marketing of cereal seed, with a further consequential amendment made by paragraph 2(7) to Schedule 9 to those Regulations. Paragraph 5 of Schedule 3 amends regulation 18(1) of the Seed Potatoes (Scotland) Regulations 2015 to correct a drafting error.

Regulation 23 revokes the Seed (Registration, Licensing and Enforcement) (Scotland) Regulations 2006 subject to savings and transitional provisions.

No business and regulatory impact assessment has been prepared for these Regulations.

POLICY NOTE

The above instrument was made in exercise of the powers conferred by sections 16(1) to (5A), 24(5), 26(2) and (3) and 36 of the Plant Varieties and Seeds Act 1964 ("the 1964 Act"). The instrument is subject to negative resolution procedure.

Policy Objectives

The purpose of this instrument is to:

- Revoke and replace the Seeds (Registration, Licensing and Enforcement) Regulations 2006 (S.S.I. 2006/313) ("the 2006 Regulations"). The 2006 Regulations regulated the use of licensed personnel under official supervision in the certification of true seeds for marketing. The Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016, ("the 2016 Regulations") update the legislation in this area.
- Implement Commission Implementing Directive (EU) 2015/1955 amending Annexes I and II to Council Directive 66/402/EEC on the marketing of cereal seed (O.J. No. L 284, 30.10.2015, p.142).

Consultation

To comply with the requirements of section 16(1) of the Plant Varieties and Seeds Act 1964, the consultation documents were placed on the SG website, and as well as our three major stakeholders, over 150 individuals were informed of the proposed changes to the licencing and enforcement legislation. At the end of 12 weeks, we received 2 responses to the consultations. Neither of which opposed any of the proposals.

A separate consultation exercise was undertaken to inform the industry about the change to the varietal purity standard for hybrid barleys produced by means of cytoplasmic male sterility (CMS). NFU Scotland, AIC Scotland and the Scottish Seed Trade Association (SSTA) were contacted directly. They have no objections to the varietal purity standard being reduced as required by the EU. The information was cascaded more widely by way of a Seed Certification information letter sent to the seed industry in Scotland.

Purpose of The Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016 (“the 2016 Regulations”)

The marketing of seed is regulated by five EU Directives and these are transposed into domestic legislation by the Seed Marketing Regulations, namely, the Beet Seed (Scotland) (No 2) Regulations 2010; the Cereal Seed (Scotland) Regulations 2005; the Fodder Plant Seed (Scotland) Regulations 2005; the Oil and Fibre Plant Seed (Scotland) Regulations 2004 and the Vegetable Seeds Regulations 1993.

The Seed Marketing Regulations require that certified seed meets certain statutory standards before it may be marketed. That certification process includes the inspection of crops, the sampling of seed, the testing of seed lots and the observation of control plots. Whilst the system could operate using only official personnel (that is with government officials) and indeed does operate that way in some countries, for many years now Member States have taken advantage of the flexibility provided in the EU Directives to license crop inspectors, seed samplers and seed testing stations, which have operated in most parts of the UK, including throughout Scotland.

The Seed Marketing Regulations recognise the involvement of licensed personnel in the certification process. The 2016 Regulations support the Seed Marketing Regulations by making provision for licensed personnel and regulating the manner in which they operate. It is a requirement of EU law that all licensed activity of this type takes place under official supervision, hence the continuing need to regulate such activities.

The 2006 Regulations are intended to bring greater consistency and flexibility to the regulation of licensed seed personnel. The 2016 Regulations will bring regulation of all the certification / marketing functions undertaken by the industry in Scotland in line with each other. Although similar in format, each licence will provide clear indications as to what functions the holder is permitted to undertake and the conditions that apply. The new format of licences also allows for consistency in language and cover a five year period rather than the current three.

Main changes introduced by the 2016 Regulations

Registration to Licence

Previously, Scottish Government licenced the following seed activities –

- crop inspecting;
- seed sampling and;
- seed testing

By contrast, seed merchants, seed processors and seed packers were subject to registration which although it allowed for termination and revocation, it did not expire. The new Professional Seed Operator' licence allows more flexibility with regards to functions, conditions and crop species and is to be granted for a period of five years (which can be renewed) in-line with the other licences. This is also consistent with changes made elsewhere in the UK.

Changes to Licences

In light of the 2016 Regulations, the opportunity has been taken to revise the format of licences so that they are, broadly similar and therefore providing a clearer and more informative text as to what each individual / company licence enables the holder to do. Original licence and registration numbers are retained by the holders. At the moment, existing licences run for a period of 3 years. However, in light of the 2016 Regulations, all new licences will run for a period of 5 years (which can be renewed). Transitional arrangements are made in relation to existing licences by regulation 23 of the 2016 Regulations so that those will be varied to reflect the new format of the licence (though without altering their existing expiry date). With no changes to licence fees expected until 2017, there will be no new or unexpected costs for licence holders. In relation to existing registrations, those will continue to apply for a transitional period (31 December 2016), subject to approval during that period of new licences for professional seed operators.

Variation, Suspension and revocation of licences

As well as applying consistent variation, suspension and revocation provisions in relation to all four licensed activities, provision is also made (see regulation 7 of the 2016 Regulations) to enable the suspension or revocation of licences in whole or in part. The latter introduces a further degree of flexibility to deal with a failure to comply with licence conditions or other relevant legal requirements on licence holders as set out in the 2016 Regulations.

As was the case under the 2006 Regulations, regulation 7(4) of the 2016 Regulations enables the suspension of a licence (in whole or, now, in part) with immediate effect. This will allow a person to be stopped immediately from undertaking any further work in relation to specific species or functions, where continuing to do so is causing, or likely to cause, prejudice to the administration or enforcement of the seeds regulations.

As with the 2006 Regulations, regulations 15 and 16 respectively provide licence holders with the right to make representations or to appeal in relation to enforcement decisions taken by the Scottish Ministers in relation to licences.

Minor Amendments

Whilst drafting the 2016 Regulations, we have also taken the opportunity to make some amendments to take account of changes to the Seed Marketing Regulations over the years, which have impacted on the 2006 Regulations such as –

- The inclusion of new categories within licences (i.e. Preservation and conservation mixtures);
- Changes to seeds forms and the introduction of My SEEDS (a new online application system for seed certification and seed testing) brings about changes to some of the seed forms (see Schedules 1 and 2 to the 2016 Regulations which prescribes new forms in relation to the sampling and testing of seeds) improving the administration of the regulations.
- Consequential amendments to the Seed Marketing Regulations (see Schedule 3 to the 2016 Regulations)
- Paragraph 5 of Schedule 3 to the 2016 Regulations also amends regulation 18(1) of the Seed Potatoes (Scotland) Regulations 2015 (S.S.I. 2015/395) to correct a drafting error identified during the Parliamentary scrutiny of that instrument by the Delegated Powers and Law Reform Committee which we have taken the opportunity to correct at the earliest available opportunity.

Financial Effects

A business and regulatory impact assessment has not been prepared as the changes in the Seed (Licensing and Enforcement) (Scotland) Regulations do not bring about any increased costs.

Transposition Note

A transposition note has been prepared in relation to this instrument.

Timing

This instrument will come into force on the 1 July 2016.

Scottish Government
Agriculture, Food and Rural Communities Directorate
Agriculture and Rural Development Division
CAP Reform & Crop Policy

TRANSPOSITION NOTE

The Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016 (“the 2016 Regulations” implement aspects of the following Directives (“the Seed Marketing Directives” as defined in regulation 2(1)):

- (a) Council Directive 66/401/EEC on the marketing of fodder plant seed(1);
- (b) Council Directive 66/402/EEC on the marketing of cereal seed(2);
- (c) Council Directive 2002/54/EC on the marketing of beet seed(3);
- (d) Council Directive 2002/55/EC on the marketing of vegetable seed(4); and
- (e) Council Directive 2002/57/EC on the marketing of seed of oil and fibre plants(5)).

However, the Seed Marketing Directives are principally implemented by the following Regulations (“the Seed Marketing Regulations” as also defined in regulation 2(1) of the 2016 Regulations):

- (a) in relation to vegetable seed, the Vegetable Seeds Regulations 1993(6);
- (b) in relation to oil and fibre plant seed, the Oil and Fibre Plant Seed (Scotland) Regulations 2004(7);
- (c) in relation to cereal seed, the Cereal Seed (Scotland) Regulations 2005(8);
- (d) in relation to fodder plant seed, the Fodder Plant Seed (Scotland) Regulations 2005(9); and
- (e) in relation to beet seed, the Beet Seed (Scotland) (No. 2) Regulations 2010(10).

This transposition note (see **A** below) covers only those aspects of the Seed Marketing Directives as implemented by the 2016 Regulations and not those aspects as implemented by the Seed Marketing Regulations.

As also indicated in this transposition note (see **B** below), the 2016 Regulations implement Commission Implementing Directive (EU) 2015/1955(11) amending Council Directive 66/402/EEC on the marketing of cereal seed (as included in the definition of the Seed Marketing Directives – see above). This is to include provisions in relation to the production of hybrids of barley by means of cytoplasmic male sterility.

(1) OJ L 125, 11.7.1966, p.2298 as last amended by Commission Implementing Directive 2012/37/EU (OJ L 325, 23.11.2012, p.13).

(2) OJ L 125, 11.7.1966, p.2309 as last amended by Commission Implementing Directive (EU) 2015/1955 (OJ L 284, 30.10.2015, p.142).

(3) OJ L 93, 20.7.2002, p.12 as last amended by Council Directive 2004/117/EC (OJ L 14, 18.1.2005, p.18).

(4) OJ L 193, 20.7.2002, p.33 as last amended by Commission Implementing Directive 2013/45/EU (OJ L 213, 8.8.2013, p.20).

(5) OJ L 193, 20.7.2002, p.74 as last amended by Commission Directive 2009/74/EC (OJ L 166, 27.6.2009, p.40).

(6) S.I. 1993/2008, amended by S.I. 1996/1452, S.I. 1997/616, S.I. 1999/1863, S.S.I. 2000/250, S.I. 2001/3510, S.S.I. 2007/305, S.S.I. 2010/219, S.S.I. 2010/425 and S.S.I. 2013/326.

(7) S.S.I. 2004/317, amended by S.S.I. 2006/313, S.S.I. 2007/224, S.S.I. 2007/536, S.S.I. 2009/223 and S.S.I. 2010/219.

(8) S.S.I. 2005/328, amended by S.S.I. 2006/313, S.S.I. 2006/448, S.S.I. 2007/224, S.S.I. 2007/536, S.S.I. 2009/223 and S.S.I. 2010/219.

(9) S.S.I. 2005/329, amended by S.S.I. 2006/313, S.S.I. 2006/448, S.S.I. 2007/224, S.S.I. 2007/536, S.S.I. 2009/223, S.S.I. 2009/330, S.S.I. 2010/219, S.S.I. 2012/5 and S.S.I. 2013/326.

(10) S.S.I. 2010/148, amended by S.S.I. 2011/413.

(11) OJ L 25, 30.10.2015, p.142.

A. Transposition of the Seed Marketing Directives

Articles of the relevant Directive ⁽¹²⁾	Implementing provision in the 2016 Regulations
<p>(1) Council Directive 66/401/EEC (fodder plant seed):-</p> <p>Article 2(1)(B)(1)(d) and (2)(d), (C)(d), (Ca)(d), (Cb)(d), (D)(d) and E (carrying out examinations of seeds under official supervision and official measures subject to no private gain).</p> <p>Article 2(3)(A) – field inspections, including by inspectors having the necessary technical qualifications; deriving no private gain; being officially licensed; carrying out inspections under official inspection (including at least 5% of seed crops); and penalties for infringements (including withdrawal of licences).</p> <p>Article 2(3)(B) - seed testing, including authorisation of seed testing laboratories with a seed analyst-in-charge and seed analysts with the necessary technical qualifications; laboratories with satisfactory premises and equipment; carrying out testing under appropriate supervision (including at least 5% check testing of seed lots); and penalties for infringements (including withdrawal of authorisations).</p> <p>Article 7 - seed sampling by authorised seed samplers having the necessary technical qualifications; carrying out sampling under proper supervision (including at least 5% check sampling); and penalties for infringements (including withdrawal of authorisations).</p> <p>(2) Council Directive 66/402/EEC (cereal seed):-</p> <p>Article 2(1)(C)(d), (Ca)(c), (D)(1)(d),</p>	<p>Official supervision</p> <p>Part II of the 2016 Regulations makes provision for the licensing, subject to appropriate conditions, of crop inspectors, seed samplers and seed testing stations exercising functions under official supervision by the Scottish Ministers for the purposes of the Seed Marketing Directives as implemented by the Seed Marketing Regulations.</p> <p>Licence conditions</p> <p>The relevant requirements of the Seed Marketing Directives as implemented by the Seed Marketing Regulations will also be reflected in licence conditions for crop inspectors, seed samplers and seed testing stations under regulation 4(1)(a) and (3).</p> <p>No private gain</p> <p>Regulation 11 requires licensed crop inspectors, seed samplers or a seed testing station to charge the fees prescribed in seeds regulations (currently the Seed (Fees) (Scotland) Regulations 2016) and to derive no private gain in charging reasonable fees for carrying out functions.</p> <p>Crop inspections</p> <p>Regulations 3 and 4 make provision for</p>

(12) The Seed Marketing Directives were principally amended by Council Directive 2004/117/EC (OJ L 14, 18.1.2005, p.18) in relation to personnel licensed/authorised for the purposes of exercising functions under official supervision under those Directives.

<p>(2)(b) and (3)(c), (E)(d), (F)(d), (G)(d) and (H) (carrying out examinations of seeds under official supervision and official measures subject to no private gain).</p> <p>Article 2(3)(A) – field inspections, including by inspectors having the necessary technical qualifications; deriving no private gain; being officially licensed; carrying out inspections under official inspection (including at least 5% of seed crops); and penalties for infringements (including withdrawal of licences).</p> <p>Article 2(3)(B) - seed testing, including authorisation of seed testing laboratories with a seed analyst-in-charge and seed analysts with the necessary technical qualifications; laboratories with satisfactory premises and equipment; carrying out testing under appropriate supervision (including at least 5% check testing of seed lots); and penalties for infringements (including withdrawal of authorisations).</p> <p>Article 7 - seed sampling by authorised seed samplers having the necessary technical qualifications; carrying out sampling under proper supervision (including at least 5% check sampling); and penalties for infringements (including withdrawal of authorisations).</p> <p>(3) Council Directive 2002/54/EC (beet seed):-</p> <p>Article 2(1)(c)(iv), (d)(iv) and (g) (carrying out examinations of seeds under official supervision and official measures subject to no private gain).</p> <p>Article 2(3)(A) – field inspections, including by inspectors having the necessary technical qualifications; deriving no private gain; being officially licensed; carrying out inspections under official inspection (including at least 5%</p>	<p>licensing (with appropriate conditions) of crop inspectors (see definition of “licensed crop inspector in regulation 2(1)). Regulation 4(4)(b) applies a competence test in relation to crop inspectors. Regulation 8(a) enables the Scottish Ministers to require licensed crop inspectors to undertake further training and examinations. Regulations 12 and 13 make provision for supervision and checking of crop inspection results. Regulation 7(1) provides powers to suspend and revoke crop inspection licences.</p> <p>Seed testing</p> <p>Regulations 3 and 4 make provision for licensing (with appropriate conditions) of laboratories as seed testing stations. (see definition of “licensed seed testing station” in regulation 2(1)). Regulation 4(4)(c) applies a requirement that a testing station has adequate premises or equipment and requirements in relation to: (a) the Analyst in Charge (as defined in regulation 2(1) and regulation 9 also sets out the duties of an Analyst in Charge)); and (b) seed analysts (also as defined in regulation 2(1)). Regulation 8(b) enables the Scottish Ministers to require seed analysts to undertake further training and examinations. Regulations 12 and 13 make provision for supervision and checking of seed testing results. Regulations 7(1) and (2) provide powers to suspend and revoke seed testing station licences.</p> <p>Seed sampling</p> <p>Regulations 3 and 4 make provision for licensing (with appropriate conditions) of seed samplers (see definition of “licensed seed sampler” in regulation 2(1)). Regulation 4(4)(b) applies a competence test in relation to seed samplers. Regulation 8(a) enables the Scottish Ministers to require licensed seed samplers to undertake further</p>
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<p>of seed crops); and penalties for infringements (including withdrawal of licences).</p> <p>Article 2(3)(B) - seed testing, including authorisation of seed testing laboratories with a seed analyst-in- charge and seed analysts with the necessary technical qualifications; laboratories with satisfactory premises and equipment; carrying out testing under appropriate supervision (including at least 5% check testing of seed lots); and penalties for infringements (including withdrawal of authorisations).</p> <p>Article 9 - seed sampling by authorised seed samplers having the necessary technical qualifications; carrying out sampling under proper supervision (including at least 5% check sampling); and penalties for infringements (including withdrawal of authorisations).</p> <p>(4) Council Directive 2002/55/EC (vegetable seed):- –</p> <p>Article 2(1)(c)(iv),(d)(iv) and (f) (carrying out examination of seeds under official supervision and official measures subject to no private gain).</p> <p>Article 2(4)(A) – field inspections, including by inspectors having the necessary technical qualifications; deriving no private gain; being officially licensed; carrying out inspections under official inspection (including at least 5% of seed crops); and penalties for infringements (including withdrawal of licences).</p> <p>Article 2(4)(B) - seed testing, including authorisation of seed testing laboratories with a seed analyst-in- charge and seed analysts with the necessary technical qualifications; laboratories with satisfactory premises and equipment; carrying out testing under appropriate supervision (including at least 5% check</p>	<p>training and examinations. Regulations 12 and 13 make provision for supervision and checking of seed samples. Regulation 7(1) provides powers to suspend and revoke seed sampler's licences.</p>
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testing of seed lots); and penalties for infringements (including withdrawal of authorisations).

Article 25 - seed sampling by authorised seed samplers having the necessary technical qualifications; carrying out sampling under proper supervision (including at least 5% check sampling); and penalties for infringements (including withdrawal of authorisations).

(5) Council Directive 2002/57/EC (oil and fibre plant seed):-

Article 2(1)(c)(iv),(d)(1)(ii) and (2)(iii), (e)(iv), (f)(iv), (g)(iv), (h)(iv), (i)(iv), (j)(iii) and (h) (carrying out examination of seeds under official supervision and official measures subject to no private gain);

Article 2(5)(A) – field inspections, including by inspectors having the necessary technical qualifications; deriving no private gain; being officially licensed; carrying out inspections under official inspection (including at least 5% of seed crops); and penalties for infringements (including withdrawal of licences).

Article 2(5)(B) - seed testing, including authorisation of seed testing laboratories with a seed analyst-in-charge and seed analysts with the necessary technical qualifications; laboratories with satisfactory premises and equipment; carrying out testing under appropriate supervision (including at least 5% check testing of seed lots); and penalties for infringements (including withdrawal of authorisations).

Article 9 - seed sampling by authorised seed samplers having the necessary technical qualifications; carrying out sampling under proper supervision (including at least 5% check sampling); and penalties for infringements (including

withdrawal of authorisations).

B. Transposition of Commission Implementing Directive (EU) 2015/1955

Article of the Directive	Implementing provision in the 2016 Regulations
Article 1 and Annex (1) (amendments to Annex I, Point 5 of, and inserting a new Point 5a into, Council Directive 66/402/EEC).	Schedule 3, Part II – amendments to the Cereal Seed (Scotland) Regulations 2005 (“the 2005 Regulations”), in particular: - Paragraph 2(6)(a)(i) – amendment to Schedule 4, Part I, paragraph 7 of the 2005 Regulations to provide for minimum isolation distances for seeds, including hybrids of barley produced by means of cytoplasmic male sterility (“CMS”). - Paragraph 2(6)(a)(ii) – amendment to Schedule 4, Part I, paragraph 8 of the 2005 Regulations to make provision for varietal identity and purity for crops of hybrids of barley produced by means of CMS (see new paragraph 8(6)).
Article 1 and Annex (2) (amendments to Annex II, Point 1.C and Point 1.E of Annex II to Council Directive 66/402/EEC).	Schedule 3, Part II – amendments to the Cereal Seed (Scotland) Regulations 2005 (“the 2005 Regulations”), in particular: - Paragraph 2(6)(b)(i) – amendments to Schedule 4, Part II, paragraph 13 of the 2005 Regulations to make provision for the minimum varietal purity of seeds, including hybrids of barley produced by means of CMS. - Paragraph 2(6)(b)(ii) – amendment to Schedule 4, Part II, paragraph 15 of the 2005 Regulations to include references to hybrids of barley produced by means of CMS.
Article 2	As per regulation 2(1), the amendments to the 2005 Regulations come into force on 1 st July 2016.

Annexe A

EXTRACT FROM THE DELEGATED POWERS AND LAW REFORM COMMITTEE'S 15th REPORT OF 2016

This instrument makes provision in relation to the licensing of individuals involved in the marketing, inspection and analysis of seeds. The instrument revokes and replaces the Seeds (Registration, Licensing and Enforcement) (Scotland) Regulations 2006 ("the 2006 Regulations").

In considering the instrument, the Committee sought an explanation as to whether paragraphs (2), (6) and (7) of regulation 15 sufficiently captured the Scottish Government's policy intention, given that those paragraphs refer to notices or information to be given by Ministers to a "licence holder". The Committee also asked about a particular aspect of the transitional arrangements set out in regulation 23. The correspondence is reproduced at Annexe B.

The Scottish Government explained that paragraphs (2), (6) and (7) of regulation 15, in referring only to a "licence holder" as the person to whom notices or information are required to be given in accordance with those paragraphs, contain errors. The policy intention is that persons who are not licence holders but who have simply applied for a licence under regulation 4, may also receive such information or notices. The definition of the term "licence holder" in regulation 2 does not include that latter group of persons and in the Committee's view, cannot be read expansively so as to include such persons. The Committee accordingly concludes that the drafting of paragraphs (2), (6) and (7) of regulation 15 – when read with the definition of "licence holder" in regulation 2 – do not deliver in full the Scottish Government's intended policy.

The Committee accordingly draws the instrument to the Parliament's attention under reporting ground (i) as paragraphs (2), (6) and (7) of regulation 15 appear to be defectively drafted. Those paragraphs require the Scottish Ministers to take certain steps in relation to a "licence holder". The policy intention, however, is that certain of those steps are required to be taken in relation to persons who are not licence holders (having regard to the definition of that term in regulation 2) but who have simply applied for a licence under regulation 4. To the extent that paragraphs (2), (6) and (7) of regulation 15 fail to refer to the latter group of persons, those paragraphs do not appear to fully deliver the intended policy.

The Committee notes the Scottish Government's intention to amend regulation 15 at the earliest available opportunity to correct these errors and encourages the Scottish Government to do so as soon as possible and, in any event, prior to commencement of the regulations on 1st July 2016.

Annexe B

Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016 (SSI 2016/68)

On 11 February 2016, the Scottish Government was asked:

Regulation 15(2) provides that before the Scottish Ministers take any decision referred to in regulation 15(1) they must give the “licence holder” a notice stating what they are proposing to do and the reasons for it; and the opportunity of making representations. Similarly, regulations 15(6) and (7) refer to giving notice to a “licence holder” of the fact that a decision referred to in paragraph (1) has been made, the reasons for the decision and the date from which it takes effect, as well as information about rights of appeal. One of the decisions referred to in regulation 15(1) is the decision to refuse to grant a licence under regulation 4(1)(b). A licence holder is defined in regulation 2(1) as a licensed crop inspector, a licensed professional seed operator, a licensed seed sampler or a licensed seed testing station.

It appears that, unless the application for a licence has been made by a person who already holds a licence, the person to whom notice or information is required to be given in accordance with paragraphs (2), (6) or (7) of regulation 15 is not, at the point where the notice or information is required to be given, properly described as a “licence holder” (having regard to the definition of that term in regulation 2(1)).

- a) Is it the policy intention that the Scottish Ministers must give a person who is applying for a licence as of new notice or information in accordance with paragraphs (2), (6) and (7) of regulation 15?
- b) If so, is the wording of those paragraphs, in referring only to a “licence holder”, sufficiently clear?

Regulation 23(4) provides that registrations granted under regulation 5(1) of the 2006 regulations are to continue to have effect until 31st December 2016, and the 2006 regulations continue to apply to any such registration. Regulation 23(5) provides that a registered person (as defined in regulation 2(1) of the 2006 Regulations) may apply to the Scottish Ministers in accordance with regulation 3(1)(a) of the 2016 regulations to be licensed as a professional seed operator. It appears that the effect of these provisions is to provide registered persons with a 6 month transitional period during which they may apply to become licensed professional seed operators. It also appears that the effect of the savings provision is that existing registrations will expire on 31st December 2016.

On that basis, it appears possible that an application for a licence could be made during the transitional period but not determined by 31st December 2016. In those circumstances, if the registration expires on 31st December 2016, the person concerned would not be authorised to operate as a seed merchant, seed packer or seed processor in the period between 31st December 2016 and the date their licence application is finally determined. Is this the policy intention, or is further provision required to preserve the registration beyond 31st December 2016, until such date as the licence application is determined? By way of comparison, we note

that regulation 4(7) preserves existing licences until the date of determination of an application for their renewal, thereby allowing licence holders to continue to operate pending final determination of an application.

The Scottish Government responded as follows:

In relation to regulation 15, the policy intention is that the Scottish Ministers must give a person who is applying for a licence as of new notice or information in accordance with paragraph (2), (6) or (7) of regulation 15 and that is certainly how the Scottish Ministers intend to apply those provisions in practice. We accept, however, that this could be clearer in the relevant provisions of the instrument which, as the Committee has noted, refer to a “licence holder”. The Scottish Government will therefore bring forward an instrument at the earliest available opportunity in order to clarify that.

In relation to regulation 23, the policy intention is that unless the holder of an existing registration as a seed merchant seed packer or seed processor has applied for and been granted a professional seed operator’s licence on or before 31 December 2016, the existing registration will expire on that date. There are currently around 129 existing registrations and the Scottish Government is putting in place administrative arrangements to communicate with existing registration holders even in advance of the coming into force date of the instrument on 1 July 2016, in order to ascertain whether they intend to apply for a professional seed operator’s licence to replace any existing registration. It is anticipated that the vast majority will wish to do so and therefore, subject to approval of any applications, most of those licences can be issued as soon as practicable after 1 July 2016. The instrument, however, builds in a 6-month transition period as it appreciates that there may be a handful of registration holders who are not in a position to confirm their intentions until after 1 July 2016 and, indeed, there may be a few who do not wish to apply for a licence at all to operate as a professional seed operator after 31 December 2016. However, during the transition period, the Scottish Government will continue to liaise with the holders of any existing registrations who have not submitted applications, with a view to ensuring that any licence applications which are intended to be submitted by existing registration holders can be dealt with before 31 December 2016. That being the case, the Scottish Government does not consider it necessary at this stage to preserve existing registrations beyond that date.

SSI 2016/69

Title of Instrument:	Seed (Fees) (Scotland) Regulations 2016 (SSI 2016/69)
Type of Instrument:	Negative
Laid Date:	4 February 2016
Circulated to Members:	26 February 2016
Meeting Date:	2 March 2016
Minister to attend meeting:	No
Motion for annulment lodged:	No
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?	No
Reporting deadline:	21 March 2016

Delegated Powers and Law Reform Committee

6. At its meeting on 23 February 2016, the Committee considered the following instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

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

Purpose

These Regulations prescribe fees for matters relating to—

- the Vegetable Seeds Regulations 1993, the Oil And Fibre Plant Seed (Scotland) Regulations 2004, the Cereal Seed (Scotland) Regulations 2005, the Fodder Plant Seed (Scotland) Regulations 2005 and the Beet Seed (Scotland) (No. 2) Regulations 2010 (regulation 4 and Schedule 1); and
- the Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016 (regulation 5 and Schedule 2).

EXPLANATORY NOTE

As per purpose above and including:

Regulation 6 makes provision for the Scottish Ministers to exempt any person from compliance with any provision in these Regulations relating to payment of fees.

Regulation 7 revokes the Seed (Fees) (Scotland) Regulations 2014 ("the 2014 Regulations").

The fees in Schedules 1 and 2 remain unchanged from those in the 2014 Regulations, except for the following:

	<i>Current fee (£)</i>	<i>New fee (£)</i>
SCHEDULE 1		
B. Crop inspection fees		
(i) Official examination of crops (other than hybrids of swede rape) (per hectare or part thereof)	18.50	18.80
(ii) Official field inspection of hybrids of swede rape (per hectare or part thereof)	55.50	56.40
(iii) Further official examination of crops (per hectare or part thereof), other than:—	18.50	18.80
(a) further official examination of crops for wild oats	8.50	8.65
(b) further official examination of crops in respect of isolation distance	3.35	3.40
(c) further official examination of crops which have been lodged	7.50	7.65
(iv) Authentication of seed lot sown (per crop)	7.50	7.65
(v) Official examination of crops following an unsatisfactory official post control (per hectare or part thereof)	18.50	18.80
SCHEDULE 2		
B. Licensed seed testing stations		
(ii) Fee for official examination of seed	7.50	7.63
C. Cereal crop inspection courses and examination		
(i) Cereal crop inspection	607.00	618.00

course		
(ii) Initial examination and compulsory re-test:		
(a) all 3 species groups	95.00	96.70
(b) 2 species	70.00	71.20
(c) 1 species only	35.00	35.60
D. Seed sampling courses and examination		
(i) Tuition and examination for seed samplers licence (administrative and sampling elements)	407.60	415.00
(ii) Tuition and examination for seed samplers licence (administrative element only)	122.28	124.50
(iii) Re-examination fee for seed samplers licence (with sampling function enabled)	35.67	36.30
(iv) Re-examination fee for seed samplers licence (with sampling function not enabled)	10.20	10.40
E. Seed analyst courses and examination		
(i) Laboratory management course registration	1030.00	1093.00
(iii) Analyst course registration	1705.00	1809.00
(iv) Analyst course registration – additional and retake divisions (per division)	166.00	176.00

No business and regulatory impact assessment has been prepared for these Regulations given the limited impact on the costs for Scottish business.

POLICY NOTE

Introduction

The above instrument was made in exercise of the powers conferred by sections 16(1), (1A), (3)(i), (5)(a) and 36 of the Plant Varieties and Seeds Act 1964 (“the Act”) and all other enabling powers. The instrument is subject to negative resolution procedure.

Consultation

Section 16(1) of the Act requires the Scottish Ministers to consult with representatives of such interests as appear to them to be appropriate.

As well as consulting with key stakeholders (NFU Scotland, AIC Scotland, and Scottish Seed Trade Association etc.), and over 150+ interested parties, a copy of the consultation was placed on the Scottish Government website. Two responses were received. One from the NFU Scotland and another from an individual, these have both been placed on the SG website. <http://www.gov.scot/Publications/2015/12/7417/0>

Policy objectives

The purpose of this instrument is to update the provisions for the charging of seed certification (in relation to seed marketing) and associated licensed activities and it revokes and replaces the Seeds (Fees) (Scotland) Regulations 2014 ("the 2014 Regulations").

The Regulations prescribe fees in respect of matters arising under the various Seed Marketing Regulations (as amended), namely: the Cereal Seed (Scotland) Regulations 2005 (S.S.I. 2005/328), the Fodder Plant Seed (Scotland) Regulations 2005 (S.S.I. 2005/329), the Oil and Fibre Plant Seed (Scotland) Regulations 2004 (S.S.I. 2004/317) the Beet Seed (Scotland) (No 2) Regulations 2010 (S.S.I. 2010/148), the Vegetable Seeds Regulations 1993 (S.I. 1993/2008) and also under the Seed (Licensing and Enforcement, etc.) (Scotland) Regulations 2016.

Seed certification is a European Union requirement to ensure that farmers and growers receive seeds of a known minimum quality. This is achieved in Scotland through the Seed Marketing Regulations, which ensure that seeds of the main agricultural and vegetable species can be marketed only after being examined and certified as meeting specified minimum EU standards and as being derived from crops which have also met specific EU standards. The Scottish Government carry out technical and administrative work associated with seed certification, as well as providing official supervision and a number of training courses and exams.

Purpose of the Seed Fees (Scotland) Regulations 2016

A fundamental principle of the Scottish Government accounting procedure and practice is that each statutory service should have its own financial objective, have separate costing and be charged for and that the financial objective of a statutory service should normally be full cost recovery.

The fees are reviewed annually, to ensure that if any changes are required, they are implemented as far as possible that year and not allowed to accumulate over a number of years, resulting in large increases.

The review of fees for 2016 indicates full cost recovery is being achieved in all areas except training courses and examinations for crop inspectors, seed samplers and seed analysts, crop inspection fees and the supervision fee for a Licensed Seed

Testing Station. The fees applicable to these service are too be increased by 1.7 % in line with CPI.

Financial effects

A business and regulatory impact assessment has not been prepared. The three areas where fees are requiring to be increased are anticipated to have minimal effect on the seed industry, as the increase is in-line with inflation and will only affect a very small number of the industry.

Timing

The regulations come into force on 1 July 2016

Scottish Government
Agriculture, Food and Rural Communities Directorate
Agriculture and Rural Development Division
CAP Reform & Crop Policy

SSI 2016/83

Title of Instrument: Plant Health (Scotland) Amendment Order 2016 (SSI 2016/83)

Type of Instrument: Negative

Laid Date: 4 February 2016

Circulated to Members: 26 February 2016

Meeting Date: 2 March 2016

Minister to attend meeting: No

Motion for annulment lodged: No

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

Reporting deadline: 21 March 2016

Delegated Powers and Law Reform Committee

8. At its meeting on 23 February 2016, the Committee considered the following instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

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

Purpose

This Order amends the Plant Health (Scotland) Order 2005 (S.S.I. 2005/613) ("the principal Order").

EXPLANATORY NOTE

As per purpose above and including:

Phytosanitary certificates

Article 4 amends article 15 of the principal Order (general provisions relating to certificates) to remove the requirement for phytosanitary certificates or phytosanitary certificates for re-export to be based on an inspection performed 14 days before the date of dispatch of the relevant material.

Notification requirements

Article 5(2)(a) amends article 19B of the principal Order (landing of trees in Scotland) to change the period during which notice must be given of the landing of plants to which article 19B applies from 24 hours in advance of landing to any time prior to or within 5 days of the landing of those plants. Article 5(2)(b) adds plants of the genera *Prunus* L. to the list of plants to which the notification requirement of article 19B applies.

Commission Implementing Decisions 2014/237/EU; (EU) 2015/237 and (EU) 2015/2434

Article 9(b) inserts item 17 into Schedule 3 of the principal Order (relevant material which may not be landed in Scotland if that material originates in certain third countries) for the purposes of implementing the prohibition on certain fruits and vegetables originating in India contained in Commission Implementing Decision 2014/237/EU on measures to prevent the introduction into and the spread within the Union of harmful organisms as regards certain fruits and vegetables originating in India (OJ L 125, 26.4.2014, p.93) as amended by Commission Implementing Decision (EU) 2015/2434 (OJ L 334, 22.12.2015, p.61). Article 10(1)(d) introduces item 89 into Part A of Schedule 4 to the principal Order (relevant material, from third countries, which may only be landed in Scotland if special requirements are satisfied) for the purposes of implementing Commission Implementing Decision (EU) 2015/237 (OJ L 39, 14.2.2015, p.21) (which amended Commission Implementing Decision 2014/237/EU) with the effect that Indian mango plants must be accompanied by an official statement describing the measures taken to ensure freedom from harmful organisms. Article 11 also implements Commission Implementing Decision (EU) 2015/237 by inserting paragraph 9 into Part A of Schedule 5 to the principal Order (relevant material which may only be landed in Scotland if accompanied by a phytosanitary certificate) with the effect that Indian mango plants may only be landed in Scotland if they are accompanied by a phytosanitary certificate.

Commission Implementing Decision (EU) 2015/749

Articles 3(a), 10(1)(b), 10(2)(f), 12(a) and (b) and 13(a) and (b) implement Commission Implementing Decision (EU) 2015/749 repealing Decision 2007/410/EC on measures to prevent the introduction into and the spread within the Community of Potato spindle tuber viroid (OJ L 119, 12.5.2015, p.25) by removing the provisions inserted to implement Decision 2007/410/EC. Those provisions had been inserted by S.S.I. 2007/498 and article 14(a) revokes the relevant articles of S.S.I. 2007/498.

Commission Implementing Decision (EU) 2015/789 and Commission Implementing Decision (EU) 2015/2417

Article 3(d) introduces a defined term “plants specified in relation to *Xylella fastidiosa* (Wells et al.)” into article 2(1) of the principal Order to implement Commission Implementing Decision (EU) 2015/789 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.), as amended by Commission Implementing Decision (EU) 2015/ 2417 (OJ L 125,

21.5.2015, p.36 and OJ L 333, 19.12.2015, p.143 respectively) (“the *Xylella* Decisions”). Article 3(b) also ensures that references to Commission Implementing Decision (EU) 2015/789 are construed as references to the instrument as amended from time to time in light of the evolving risks posed by this particular bacteria and the likelihood of further technical amendments to the *Xylella* Decisions to address them. Article 5(3) removes paragraph (3)(c) from article 22 of the principal Order (exceptions from certain prohibitions and requirements) with the effect of removing the exemption for certain plants remaining within infected zones, to be accompanied by a plant passport. The *Xylella* Decisions are also implemented by article 6 which inserts a new article 28A into the principal Order, imposing obligations on professional operators working with plants specified in relation to *Xylella fastidiosa* (Wells et al.) and by article 7 which creates an offence in relation to breach of the new article 28A (by amending article 45(1) of the principal Order). Article 8 amends the entry for *Xylella fastidiosa* (Wells et al.) in Schedule 1 to the principal Order (plant pests which shall not be landed in or spread within Scotland) in line with a change in terminology by the European Commission. Article 9(b) further implements the *Xylella* decisions by amending Schedule 3 to the principal Order to introduce a ban on imports of plants of *Coffea* from Costa Rica or Honduras and article 10(1)(d) substitutes for item 86 new items 86 and 87 into Part A of Schedule 4 to the principal Order with the effect of imposing special requirements on the landing of plants specified in relation to *Xylella fastidiosa* (Wells et al.) from third countries where the bacteria is not present and third countries where it is known to be present respectively. Article 10(2)(h) introduces landing and movement requirements in relation to plants specified in relation to *Xylella fastidiosa* (Wells et al.) which have been grown for at least part of their life in a demarcated area in another member State by substituting a new item 40 in Part B of Schedule 4 to the principal Order (relevant material, from another part of the European Union, which may only be landed in or moved within Scotland if special requirements are satisfied). The *Xylella* Decisions are further implemented by articles 12(c) and 13(c). Article 12(c) substitutes paragraph 12 in Part A of Schedule 6 to the principal Order (relevant material, from Scotland, or elsewhere in the European Union, which may only be landed in or moved within Scotland if accompanied by a plant passport) with the effect that a plant passport is required for the landing in or movement within Scotland of any plants specified in relation to *Xylella fastidiosa* (Wells et al.) which have been grown for part of their life in a demarcated area in another member State or any “host plants” regardless of where they were grown (“host plants” is defined by reference to the *Xylella* decisions). An exception is made where the host plants are landed or moved by a person for that person’s own use, rather than as part of that person’s trade, business or profession. Article 13(c) substitutes paragraph 12 in Part A of Schedule 7 to the principal Order (relevant material which may only be consigned to another part of the European Union if accompanied by a plant passport), with the effect that a plant passport is required for the movement from Scotland to another part of the European Union of plants specified in relation to *Xylella fastidiosa* (Wells et al.) which have been grown for part of their life in a demarcated area in a member State or “host plants” regardless of where they were grown. As in Schedule 6, an exception is made where the movement is made for personal use and not as part of a trade, business or profession.

Commission Implementing Decision (EU) 2015/893

Article 3(b) inserts a defined term into article 2(1) of the principal Order in relation to Commission Implementing Decision (EU) 2015/893 as regards measures to prevent the introduction into and the spread within the Union of *Anoplophora glabripennis* (Motschulsky) (OJ L 146, 11.6.2015, p.16). The Decision is further implemented by article 10(1)(d) which inserts new item 88 into Part A of Schedule 4 to the principal order (in respect of imports from third countries where the harmful organism is known to be present) and by article 10(2)(h) which inserts item 41 into Part B of that Schedule to introduce landing and movement requirements in relation to imports of certain plants which have been grown or moved through demarcated areas in other member States. The Decision is also implemented by articles 12(c) and 13(c) which introduce paragraphs 13 into Schedules 6 and 7 to the principal Order respectively, with the effect that certain plants which originate in third countries where the beetle is known to be present or which have been grown or moved through a demarcated area in an EU member State require a plant passport to be landed in Scotland to be moved to another part of the EU.

Commission Implementing Decision (EU) 2015/1199

Article 9(a) amends item 8 of Schedule 3 to the principal Order for the purpose of implementing Commission Implementing Decision (EU) 2015/1199 recognising Bosnia and Herzegovina as being free from *Clavibacter michiganensis* ssp. *sepedonicus* (Spieckerman and Kotthoff) Davis et al. Item 8 contains a prohibition on the introduction into Scotland of tubers of *Solanum tuberosum* L. from third countries, subject to certain exceptions. The amendment adds Bosnia and Herzegovina to the list of third countries excepted from the prohibition. There are other prohibitions relevant to imports of tubers and plants within the genus *Solanum* L at items 6 and 7 of Schedule 3 to the principal Order.

Commission Implementing Decision (EU) 2015/1849

Article 9(b) implements Commission Implementing Decision (EU) 2015/1849 on measures to prevent the introduction into and the spread within the Union of harmful organisms as regards certain vegetables originating in Ghana (OJ L 268, 15.10.2015, p.33) by introducing item 18 into Schedule 3 to the principal order, with the effect of prohibiting the import of certain plants originating in Ghana.

Spanish potatoes

In light of the threat posed in relation to *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) or *Epitrix tuberis* (Gentner) by imports of Spanish potatoes, article 10(2)(e) substitutes item 19b in Part B of Schedule 4 to the principal Order to require that all Spanish potatoes originating outside a demarcated area must be washed prior to landing in Scotland. The provision does not apply to potatoes originating in the Balearic Islands, the Canary Islands, Ceuta or Melilla.

Potatoes originating in an area demarcated in relation to *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) or *Epitrix tuberis* (Gentner) require

to satisfy the conditions set out in item 19 of Part B of Schedule 4, including the requirement that they are washed or brushed or similarly cleansed.

Commission Implementing Directive 2014/78/EU

Article 10(1)(a) and (c) respectively insert items 7c and 85a into Part A of Schedule 4 to the principal Order in order to ensure full transposition of Commission Implementing Directive 2014/78/EU amending Annexes I, II, III, IV and V to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ L 183, 24.6.2014, p.23) (“the Implementing Directive”). The provisions transposed are points 11.4 and 18.1 in Annex IV, Part A, Section I of Council Directive 2000/29/EC (OJ L 169, 10.7.2000, p.1), these points having been substituted and inserted (respectively) by Article 1 of, and point (4) of the Annex to, the Implementing Directive. The other provisions of the Implementing Directive were transposed by S.S.I. 2015/10 and by S.I. 2014/2420.

The Order also makes a number of small amendments to the principal Order (and revocations of articles in other orders) in consequence of the amendments described above and it corrects some typographical errors in the principal Order. Article 15 makes a minor amendment to the Plant Health (Scotland) Amendment Order 2015 (S.S.I. 2015/10) to correct a drafting error.

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

POLICY NOTE

Introduction

The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 2, 3 and 4(1) of the Plant Health Act 1967, section 20 of the Agriculture (Miscellaneous Provisions) Act 1972, paragraph 1A of Schedule 2 to the European Communities Act 1972 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Purpose of the instrument

This instrument amends the Plant Health (Scotland) Order 2005 (S.S.I. 2005/613) (“the PH Order”). The PH order contains measures to prevent the introduction and spread of harmful plant pests and diseases and transposes Council Directive 2000/29/EC on protective measures against the introduction into the European Union of organisms harmful to plants or plant products and against their spread within the Union (“the PH Directive”). By amending the PH Order, this instrument transposes and implements the following EU legislation:

- Commission Directive 2014/78/EU (insofar as it respectively substitutes and inserts points 11.4 and 18.1 of Section 1, Part A, Annex IV to the PH Directive).
- Commission Implementing Decision 2014/237/EU on measures to prevent the introduction into and the spread within the Union of harmful organisms as regards

certain fruits and vegetables originating in India (as amended by Commission Implementing Decision (EU) 2015/237 and Commission Implementing Decision (EU) 2015/2434

- Commission Implementing Decision (EU) 2015/749 repealing Decision 2007/410/EC on measures to prevent the introduction into and the spread within the Community of Potato spindle tuber viroid
- Commission Implementing Decision (EU) 2015/789 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et. al) (as amended by Commission Implementing Decision (EU) 2015/2417
- Commission Implementing Decision (EU) 2015/893 as regards measures to prevent the introduction into and the spread within the Union of *Anoplophora glabripennis* (Motschulsky)
- Commission Implementing Decision (EU) 2015/1199 recognising Bosnia and Herzegovina as being free from *Clavibacter michiganensis* spp. *Sepedonicus* (Spieckerman and Kotthof) Davis et al.
- Commission Implementing Decision (EU) 2015/1849 on measures to prevent the introduction into and the spread within the Union of harmful organisms as regards certain vegetables originating in Ghana; and

In addition, it includes provisions for:

- Removal of the requirement for phytosanitary certificates to be based on inspections performed within 14 days of dispatch of the goods;
- Addition of the genus *Prunus* L. to the list of tree plants which require to be notified prior to landing in Scotland;
- Adjustment of the period of notice for the landing of tree plants in Scotland (from twenty hours in advance to prior notification or no later than five days after landing);
- Introduction of washing requirements for potatoes originating in Spain (except from the Balearic Islands or any non-EU parts of Spain) in relation to the plant pest *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) or *Epitrix tuberis* (Gentner);
- Correction of numbering/typographical errors by S.S.I. 2015/10

Legislation

The PH Directive establishes the EU plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the EU of pests and diseases injurious to plants and plant produce which are specified in the Annexes of the Directive. The PH Directive is implemented in Scotland by the PH Order and, in relation to forest materials, by the Plant Health (Forestry) Order 2005 (S.I. 2005/2517), which extends to Great Britain. Similar but separate plant health legislation to the PHSO operates in England, Wales and Northern Ireland.

Policy Background

The PH Directive (and therefore the PH Order) is updated frequently, to take account of new or revised risk assessments, pest interceptions, changes in distribution of

pests and other developments. This instrument transposes and implements specific EU measures arising from technical changes in the assessment of the risks presented by particular pests and diseases.

Commission Implementing Directive 2014/78/EU was transposed into Scots law by S.I. 2014/2420 and S.S.I. 2015/10, with the exception of two provisions which substituted point 11.4 and inserted point 18.1 into Section 1, Part A, Annex IV to the PH Directive. Substituted point 11.4 relates to the plant pest *Agrilus planipennis* Fairmaire and point 18.1 relates to *Candidatus Liberibacter* spp., a causal agent of Huanglongbing disease of citrus/citrus greening. Both points restrict the introduction of the plants to which they apply, to those which originate in an “area” (point 11.4) or “country” (point 18.1) which is recognised as being free from the relevant pest by the European Commission. The intended effect of these substituted points was originally thought to be unclear (as no such area or country had been recognised by the Commission). Transposition was postponed until the intention could be clarified. It’s now understood however that they are intended to operate as prohibitions on the movement of the relevant plants until such time as the Commission recognises such an area or country and consequently the points are transposed by the instrument.

Commission Implementing Decision 2014/237/EU, 2015/237 and 2015/2434 all relate to ban of certain fruits and vegetables to protect the EU from quarantine pests, mainly insects, like non- European fruit flies from India. When the Indian Plant Health Authorities made significant improvements in the phytosanitary export certification systems and provided assurance that appropriate technical measures are available to ensure that the exports of plants of *Mangifera* L. is free from these flies, additional requirements for the import of mangoes from India was introduced. The ban remains in place for the other fruits and vegetable and a revision of this is to take place on or before 31 December 2016.

Commission Implementing Decision (EU) 2015/749 – Potato Spindle Tuber Viroid is now widely spread within the EU and there is no longer any phytosanitary risks justifying these measures therefore the measures previously put in place are now revoked.

Commission Implementing Decisions (EU) 2015/789 and (EU) 2015/2417 continues to strengthen measures to prevent the introduction and spread of *Xylella fastidiosa* (a bacterium which causes harmful effects on a very broad host range including almond, peach, plum, apricot, grapevines, citrus, coffee as well as oak, elm, Italian ryegrass, blackberry, sunflower and particularly on olives following outbreaks in Italy and France (including Corsica).

Commission Implementing Decision (EU) 2015/893 introduces new measures to protect and stop the spread of *Anoplophora glabripennis* (Motschulsky) (the Asian long-horned beetle) which poses a serious threat to a wide range of broadleaved trees in the EU.

Commission Implementing Decision (EU) 2015/1849 introduces additional requirements for the import of certain vegetables from harmful organisms, mainly non-European *Tephritidae*, like *Ceratitis cosyra* (Walker), *Thrips palmi* Karny or *Bemisia tabaci* (Genn.) from Ghana.

Adding import of *Prunus* planting material to statutory notification requirements

The current statutory notification scheme applies to oak, plane, sweet chestnut, pine, elm and ash trees. The requirements are in place to help the Plant Health and Seeds Inspectorate (PHSI) and their equivalents in Devolved Administrations build intelligence about particular trades, particularly those where there is a risk of introducing harmful organisms, and to help arrange targeted inspections of such trees. The information is also valuable in the event of an outbreak, to facilitate tracing of trees which may be implicated.

The UK Plant Health Services (Scotland, England, Northern Ireland and Wales) published a consultation on proposals to add *Prunus* to this list and to amend the notification period timing on landing of these plants in response to the threat from a number of harmful organisms present elsewhere in the EU, but not in the UK, where the main hosts include *Prunus* species. This includes EU regulated pests such as *Xylella fastidiosa*, *Anoplophora chinensis* and *Xanthonomas arboricola* pv. *pruni*, as well as unlisted pests such as *Platynota stultana* and *Aromia bungii*. This action was supported by the sector. The time period for the notification of the landing of *Prunus* L. (and other tree plants listed in article 19B) is extended by the instrument to include notification prior to and no later than five days of landing.

Introduction of national measures against *Epitrix* (Potato flea beetle)

In Scotland it is vital to protect the health and reputation of the Scottish seed potato industry and its freedom from serious quarantine pests. *Epitrix* species can be very damaging to potatoes and the potato sector. Two species of *Epitrix* have established in parts of Spain and Portugal. These are potentially the most serious plant health threat affecting the UK potato industry, as it would be impossible to eradicate and would have significant impacts on yield and export opportunities.

Commission Implementing Decision 2012/270/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix similis* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner) (as amended by Commission Implementing Decision 2014/679/EU) requires the demarcation of outbreak areas and also that potatoes being moved from such areas must be washed or brushed and must be accompanied by a plant passport for movement within the EU. These requirements were implemented in Scots law by S.S.I.s 2013/187 and 2015/10.

However in 2015, in England, Animal and Plant Health Inspectors (APHA) intercepted nine consignments of potatoes from Spain with evidence of *Epitrix* damage. These were all from non-demarcated areas. The consignments included two of unwashed potato tubers, where there is a much greater risk of live pests being present. These findings illustrate that there is an imminent threat of the pest being introduced to the UK from Spain unless stronger measures are taken. This threat exists despite UK Plant Health Services agreeing that inspectors would now check 100% of unwashed tubers from Spain.

As *Epitrix* is still being found in non- demarcated areas in Spain in order to protect the UK potato industry, Scottish Government launched a consultation in November 2015 to seek the sector's view to supplement EU requirements **by introducing a requirement that all potatoes from Spain must be washed before being exported to the UK through our national measures**. The aim is to kill or remove any *Epitrix* which might be present, as well as removing soil in which some life stages of the pest could be present. This consultation was conducted in association with the UK Plant Health Services.

This requirement is limited to potatoes from the parts of Spain which are within the EU (other than the Balearic Islands) and it does not apply to potatoes which are from demarcated areas within Spain (the conditions for which are set by Commission Implementing Decision 2012/270/EU (as amended)). This proposal was agreed by the sector and will remain in place until the Spanish Authorities have managed to control these pests in areas outwith demarcated zones.

Equivalent legislative changes are in the process of being introduced by Defra and Northern Ireland.

Consultation

Prunus Consultation

In January 2015 the GB Plant Health Services launched a 12 week consultation to seek stakeholders views on a proposal to extend the statutory notification scheme for imports of certain plant/tree imports from other EU Member States, to add some or all *Prunus* species. This would include *Prunus* imported both for forestry and non-forestry purposes. The stakeholders agreed that the preferred option was to require notification for all *Prunus* species, as this will provide comprehensive intelligence, as well as avoiding confusion in the trade as to whether particular species are covered or not.

Epitrix (Potato flea beetle) Consultation

In November 2015 the Scottish Government launched a 4 week consultation to seek the Scottish Stakeholder's views on a proposal to introduce national legislation against *Epitrix* requiring all potatoes imported from mainland Spain (exempting the Balearic Islands) to be washed before exported. Scottish Stakeholders were supportive of these measures. A similar but separate consultation was run elsewhere in the UK.

Timing

This Order is necessary now to ensure that a co-ordinated approach is taken across the UK in relation to strengthening measures on *Epitrix* and to adding *Prunus* species to the notification requirements to ensure there is a consistent approach on the improved controls at the borders within other parts of the UK. In addition we are required to reflect the EU Implementing Decisions where applicable in domestic law.

Consolidation

The PH Order has been amended on a number of occasions and it is likely that further amendments will be required as EU legislation takes account of new or revised risk assessment, pest interceptions, changes in distribution of pest and other developments. An EU Review of the Plant Health Regime is currently being conducted as part of the Smarter Rules for Safer Food package of revised regulations on the agri-food chain and while this Review is in process, there are no immediate plans to consolidate the PH Order.

Correction to Plant Health (Scotland) Amendment Order 2015 (S.S.I. 2015/10)

Article 15 of the instrument makes a minor amendment to article 13(c) of the Plant Health (Scotland) Amendment Order 2015 in response to an error identified during Parliamentary scrutiny of that instrument by the Delegated Powers and Law Reform Committee.

Business and Regulatory Impact

A Business and Regulatory Impact Assessment has not been prepared as the Order has no impact on the costs for business.

SSI 2016/88

Title of Instrument:	Wester Ross Marine Conservation Order 2016 (SSI 2016/88)
Type of Instrument:	Negative
Laid Date:	4 February 2016
Circulated to Members:	26 February 2016
Meeting Date:	2 March 2016
Minister to attend meeting:	No
Motion for annulment lodged:	No
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?	No
Reporting deadline:	21 March 2016

Delegated Powers and Law Reform Committee

10. At its meeting on 23 February 2016, the Committee considered the following instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

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

Purpose

The Wester Ross Nature Conservation Marine Protected Area Order 2014 ("the 2014 Order") designated that part of the Scottish marine area which is adjacent to Wester Ross as a nature conservation marine protected area ("Wester Ross MPA"). The 2014 Order provides that a range of marine habitats, geomorphological features and one low or limited mobility species are protected features within the Wester Ross MPA.

This Order furthers the stated conservation objectives for the Wester Ross MPA insofar as they relate to burrowed mud, circalittoral muddy sand communities, flame shell beds, kelp and seaweed communities on sublittoral sediment, maerl beds, maerl or coarse shell gravel with burrowing sea cucumbers and northern feather star aggregations on mixed substrata.

EXPLANATORY NOTE

Article 11(1) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy (OJ L 354, 28.12.2013, p.22)

empowers EU member States to adopt conservation measures which are necessary for compliance with obligations under EU environmental legislation.

The Wester Ross Nature Conservation Marine Protected Area Order 2014 (“the 2014 Order”) designated that part of the Scottish marine area which is adjacent to Wester Ross as a nature conservation marine protected area (“Wester Ross MPA”). The 2014 Order provides that a range of marine habitats, geomorphological features and one low or limited mobility species are protected features within the Wester Ross MPA.

This Order furthers the stated conservation objectives for the Wester Ross MPA insofar as they relate to burrowed mud, circalittoral muddy sand communities, flame shell beds, kelp and seaweed communities on sublittoral sediment, maerl beds, maerl or coarse shell gravel with burrowing sea cucumbers and northern feather star aggregations on mixed substrata.

Article 3 describes the area protected by this Order (“the protected area”). It is the area which is designated under the 2014 Order as the Wester Ross MPA.

Article 4 prohibits and regulates activities within the protected area.

Article 4(2) provides that a person must not deploy or use any fishing gear within the protected area. The term “fishing gear” is defined in article 4(5) of the Order.

Article 4(3) regulates the storage of fishing gear on fishing vessels within the protected area.

Article 4(4) provides that the provision made by the Order in prohibiting and regulating activities is subject to certain specified exceptions. Article 4(4)(a) provides that the prohibitions and regulations do not apply to activities carried out in the protected area for the purpose of saving life or for the purpose of securing the safety of a vessel, aircraft or marine structure. Article 4(4)(b) provides that demersal trawling, whether that be demersal trawling either by a single net or by two nets, (other than beam trawling) by fishing vessels with engines, the power of which do not exceed 500 kilowatts and registered as such under Part II of the Merchant Shipping Act 1995, is permitted within certain specified parts of the protected area, as described in Schedule 1. Article 4(4)(c) provides that single demersal trawling (other than beam trawling) by fishing vessels with engines, as described above, is permitted within certain specified parts of the protected area, as described in Schedule 2.

Article 5 provides that the Scottish Ministers may issue permits authorising fishing within the protected area only for the purpose of scientific research which would, apart from such a permit, be unlawful under the Order. The article makes provision regarding the procedure which applies to the making of applications for permits and the determination of such applications.

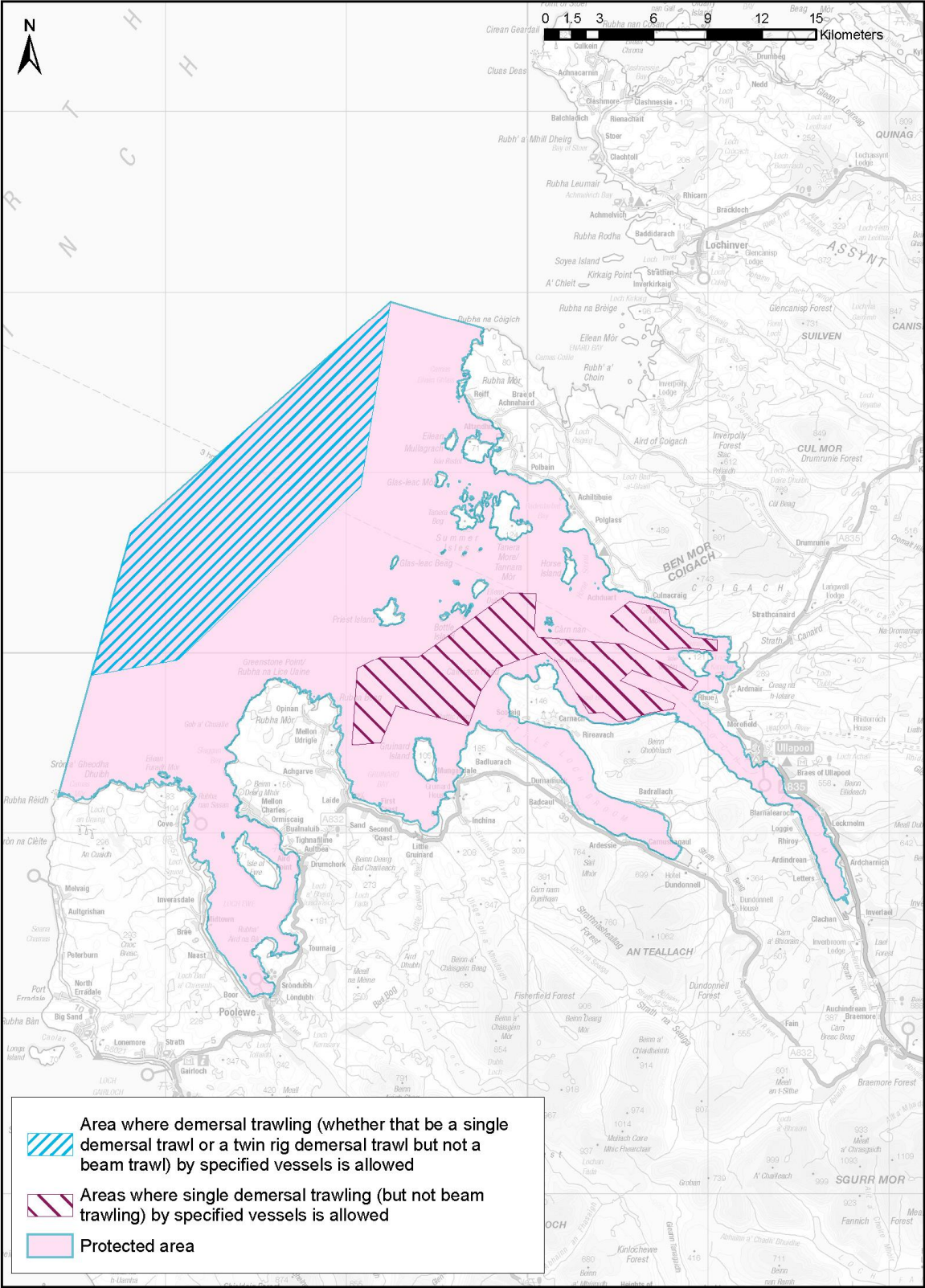
Article 6 provides that paragraph (b) of section 97(1) of the Marine (Scotland) Act 2010 does not apply in relation to an offence under section 94 of the 2010 Act of contravening this Order or an offence under section 95 of the 2010 Act committed in relation to the protected area.

Article 7 revokes the entry relating to Little Loch Broom and Gruinard Bay, listed as item 10 of Schedule 1 to the Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Order 2004, and the Wester Ross Marine Conservation Order 2015 (“the 2015 Order”). The 2015 Order prohibited the deployment or use of dredges, and regulated the storage of dredges on fishing vessels within the Wester Ross MPA. The measures which were made by that Order on an urgent basis under the powers within section 88 of the 2010 Act are re-made on a permanent basis by this Order.

A person who contravenes this Order commits an offence and is liable on summary conviction to a fine of up to £50,000, and on conviction on indictment to an unlimited fine.

A business and regulatory impact assessment has been prepared in relation to this Order and placed in the Scottish Parliament Information Centre. A copy of this can be obtained from Marine Scotland, the Scottish Government, Victoria Quay, Edinburgh, EH6 6QQ.

An illustrative map showing the Wester Ross MPA, and the parts in respect of which article 4(4) of the Order applies, is attached to this note.



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POLICY NOTE

The above instrument was made in exercise of the powers conferred by sections 1 and 2A of the Inshore Fishing (Scotland) Act 1984 and sections 85(1)(a), (2) and (4), 86(1) and (3), 88(1) and (2) and 92(1) and (5) of the Marine (Scotland) Act 2010. The instrument is subject to negative procedure.

Policy Objectives

The purpose of this instrument is to further the conservation objectives of the of the Wester Ross Nature Conservation Marine Protected Area ("Wester Ross MPA"), including the recovery of maerl beds and flame shell bed, which are two of the protected features. The designation of the Wester Ross MPA took effect on 07 August 2014.

Section 3 of the Marine (Scotland) Act 2010 provides that Scottish Ministers and public authorities must act in a way best calculated to further the achievement of sustainable development, including the protection and enhancement of the health of the Scottish marine area. Scottish Ministers consider this Marine Conservation Order necessary to further the conservation objectives of the Wester Ross MPA.

Scottish Ministers are empowered by Article 11(1) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy¹³ to adopt conservation measures which are necessary for compliance with obligations under EU environmental legislation. This instrument will make a contribution towards compliance with the EU Marine Strategy Framework Directive (Directive 2008/56/EC of the European Parliament and of the Council establishing a framework for community action in the field of marine environmental policy).

The instrument prevents certain fishing methods from taking place in the Wester Ross MPA. It also regulates the use of the Wester Ross MPA by certain other fishing methods.

Consultation

A consultation on potential management approaches took place between November 2014 and February 2015. In response to that consultation Scottish Ministers published notice of their intention to make this instrument in June 2015.

Section 87 of the Marine (Scotland) Act 2010 sets out the consultation procedure which applies before a Marine Conservation Order may be made. Representations were invited from stakeholders between June and August 2015, and again between December 2015 and January 2016.

For the first consultation there were a variety of representations highlighting changes that could be made to improve the measures from a fisheries perspective. Many of these changes were adopted for the second consultation, and those revisions were considered to be an improvement for an environmental perspective. Many of the

¹³ (OJ L 354, 28.12.2013, p.22)

responses to the second consultation repeated views already expressed and no new substantive information came to light.

Having taken into account all the representations received, the Scottish Government concluded that the proposal from the second consultation should remain unchanged.

Impact Assessments

An equality impact assessment screening has been completed on the Wester Ross Marine Conservation Order 2016. This concluded that there were no equality issues requiring full assessment.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been prepared and is available on the Scottish Government website.

BUSINESS AND REGULATORY IMPACT ASSESSMENT

Title of Proposal

Wester Ross, Marine Protected Area (MPA).
Introduction of Fisheries Management Measures, Socio-Economic Analysis

Purpose and intended effect

• Background

The Scottish Government is committed to a clean, healthy, safe, productive and biologically diverse marine and coastal environment that meets the long-term needs of people and nature. In order to meet this commitment our seas must be managed in a sustainable manner - balancing the competing demands on marine resources. Biological and geological diversity must be protected to ensure our future marine ecosystem is capable of providing the economic and social benefits it yields today.

Marine Protected Areas (MPAs) are designated under the Marine (Scotland) Act 2010. The Wester Ross MPA¹⁴ was designated in 2014. These management measures are designed to further the conservation objectives of the MPA.

The Wester Ross MPA encompasses seabed features that not only offer valuable insights into Scotland's glacial past but are also home to an amazing array of plants and animals. Burrowed mud, flame shell beds, maerl beds and northern feather star aggregations to name but a few, all find a place to thrive in the mosaic of sea lochs, bays and near shore island channels. This complex landscape is a legacy from the end of the last ice age, when the ice sheet that once covered most of Scotland retreated.

The deeper parts of the MPA are covered by extensive areas of burrowed mud. Norway lobsters can be seen guarding the entrances to their burrows amongst dense forests of seapens. All three species of seapen found in Scottish coastal waters are present including substantial numbers of the scarce tall

¹⁴ <http://www.gov.scot/Resource/0045/00456503.pdf>

seapen.

Increased tidal flow in shallower waters between the coastal islands and on the sills of the sea lochs supply the necessary food and aeration for beds of flame shells and maerl to form. These habitats provide a stable home for a myriad of other plants and animals, from beautiful burrowing sea cucumbers burying their bodies in the maerl and gravel, to northern feather stars gripping onto the mixed sediments.

Summary of Features and Conservation Objectives - Wester Ross MPA

Maerl beds	Recover
Flame shell beds	Recover
Kelp and seaweed beds on sublittoral communities	Conserve
Circalittoral muddy sand communities	Conserve
Burrowed mud	Conserve
Maerl or coarse shell gravel with burrowing sea cucumbers	Conserve
Shallow tide-swept coarse sands with burrowing bivalves	Conserve

• Objective

The purpose of Nature Conservation MPAs is to safeguard nationally important species, habitats and geology across Scotland's marine environment. MPAs have been designed to complement existing site-based measures. The intention is to manage MPAs under the sustainable use principle.

An MPA network will support greater national and international ecological coherence as stipulated by:

- the Marine (Scotland) Act 2010
- the Marine and Coastal Access Act 2009
- the Convention on Biological Diversity
- the World Summit on Sustainable Development
- the OSPAR¹⁵ convention
- the European Marine Strategy Framework Directive

Designation of MPAs are based primarily on scientific evidence, and MPA search features have been used to underpin the selection of MPA locations.

Evidence in this BRIA is drawn from the work of statutory nature conservation body SNH¹⁶ and consultants ABPmer and effec¹⁷. This has been updated as required.

It brings together the science-led arguments for management and the projected potential social and economic consequences of such action. The site has been identified for designation as an MPA due to the confirmed presence of biodiversity and geodiversity features detailed above.

This BRIA examines the socio-economic impact of introducing fisheries management measures at the Wester Ross MPA site. The assessment period covers the 20 year period from 2015 to 2034 - reflecting the time horizon within which the majority of impacts are expected to occur. As with any socio-economic assessment related to environmental measures, the findings should be considered as estimates.

¹⁵ <http://www.ospar.org/>

¹⁶ <http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/national-designations/mpas/mpa-wer/>

¹⁷ <http://www.scotland.gov.uk/Publications/2013/08/9645>

- **Rationale for Government intervention**

Scotland's marine environment provides: food; energy sources (wind, wave and tidal power, minerals and fossil fuels); routes and harbours for shipping; tourism and recreational opportunities; and sites of cultural and historical interest. Scotland's seas contain important distinctive habitats and support a diverse range of species that require protection in order to be conserved or for recovery to be facilitated. Due to the competing demands placed upon Scotland's marine resources, more effective management is required so that a balance between conservation and sustainable use can be struck.

Currently there is not sufficient protection in place to ensure that the marine environment is properly protected and complex ecosystems safeguarded. An ecologically coherent network of well-managed protected areas is vital to conserve and regenerate our seas, in turn protecting the many goods and services they provide now, and for generations to come.

Contribution to an Ecologically Coherent network

Scotland's seas support a huge diversity of marine life and habitats, with around 6,500 species of plants and animals, with plenty more to be found in the undiscovered deeps of the north and west of Scotland. Our seas account for 61% of UK waters and remain at the forefront of our food and energy needs, through fishing, aquaculture, oil and gas, and new industries such as renewables, as well as recreation activities and ecotourism. An ecologically coherent network of well-managed MPAs is vital to conserve and regenerate our seas, in turn protecting the many goods and services they provide now, and for generations to come. Furthermore it is likely that a network of Nature Conservation MPAs will demonstrate beneficial network effects, i.e. the benefit from the network as a whole may be greater than the sum of the benefits from the individual MPAs. These effects are potentially of great importance in marine protected areas because of the lack of barriers and mobility of species.

Consultation

A public consultation ran from 11 November 2014 to 02 February 2015 and included 14 local level drop-in events. Feedback from the events and formal consultation responses helped finalise the management measures which this assessment is based on. In addition a further period of 8 weeks was provided for representations from 11th June to 9th August on the draft MCO. An additional 4 weeks were provided for final changes between 18 December 2015 and 18 January 2016.

Introduction of fisheries management measures

The formal introduction of fisheries management measures at the Wester Ross site will provide recognition and protection to the natural features of the site while also contributing to the wider Scottish and UK marine conservation network.

- **Sectors and groups affected**

The following sectors have been identified as present (or possibly present in the future) within the Wester Ross site and are potentially affected by the management measures:

- Commercial Fisheries
- Public Sector

Benefits of introducing fisheries management measures

Fisheries management measures will help to conserve the range of biodiversity in Scottish waters. Such measures will complement (not duplicate) other types of designation and provide an essential contribution to establishing an ecologically coherent network of marine protected areas. In the absence of such measures, there would be areas of Scotland's marine environment that would continue to be unprotected.

Appropriate fisheries management measures will reduce the risk that the extent, population, structure, natural environmental quality and processes of features protected will decrease or degrade over time. The risk that the features will be adversely affected by human activities is greater if not protected by management measures. In addition, beyond a certain point of degradation, changes to ecosystems may be large and irreversible, resulting in a significant societal cost. Avoiding such a reduction in ecosystem services is thus a key benefit of introducing fisheries management measures.

While it may not be possible with current levels of research to monetise benefits with a satisfactory degree of rigour, it is clear that many of the benefits relate to aspects of our lives that we take for granted and for which it is good practice and common sense to maintain through protection measures.

Ecosystem Services Benefits

Ecosystems are very complex, and it is thought that the more complex an ecosystem is the more resilient it is to change. Therefore, if it is damaged or if a species or habitat is removed from that ecosystem, the chances of survival for those services reduce as the ecosystem becomes weaker. However, by conserving or allowing the species and habitats that make up that ecosystem to recover, we can be more confident of the continuation of the long-term benefits the marine environment provides.

Non-use value of the natural environment is the benefit people get simply from being aware of a diverse and sustainable marine environment even if they do not themselves 'use it'. We take for granted many of the things we read about or watch, such as bright colourful fish, reefs and strange shaped deep sea curiosities, to lose them would be a loss to future generations that will not be able to experience them. Due to the scientific uncertainty involved it is challenging to put a true value on this, but the high quality experience and increasing knowledge of Scotland's seas can be better preserved through measures such as MPAs.

Whilst ecosystem services benefits at an individual site level cannot be easily calculated, the non-use value to Scottish households of marine conservation in Scottish waters generated by a well-functioning MPA network as a whole is estimated to be within the range of £239–583 million¹⁸ over the 20 year assessment period.

There could be a major transformative effect on inshore habitat and a significantly enhanced flow of environmental goods and services. We know the inherent capacity of the system and the flora and fauna that it could support. This would see the expansion of recreational activities such as diving, sea-angling, and other tourism alongside sustainable methods of fishing.

¹⁸ <http://www.scotland.gov.uk/Publications/2013/08/9645>

The Assessing the Options for Change¹⁹ report produced modelled results for excluding demersal mobile fishing gear within 1nm or 3nm of the coast. In both cases the least favourable outcome would result in net benefit to the economy over a 20 year period. However it cannot be predicted whether the same benefits can be derived over a proportion of the sea area. Nevertheless if this model is correct in its predictions then the proposed management measures should deliver net economic benefits in the long term.

At the very least, more sustainable fishing activities will replace those excluded. There would be no impediment to methods such as hand diving and creel fishing for crabs, lobsters, and nephrops being able to produce the same value to the economy over the assessment period.

Anticipated Benefits to Ecosystem Services, Wester Ross

Summary of Ecosystem Services Benefits arising from Designation of the Site as an MPA								
Services	Relevance to Site	Baseline Level	Estimated Impacts of Designation			Value Weighting	Scale of Benefits	Confidence
			Lower	Intermediate	Upper			
Fish for human consumption	High. Site fishing grounds are valuable, and contain nursery habitats.	Stocks not at MSY ²⁰ , maerl beds extent needs to recover	Nil	Moderate, protection of shellfish beds can contribute to maintenance and recovery of stocks – benefits are higher under stronger protection measures, but ecosystem response is uncertain.		High, significant commercial landings from site. Commercially valuable species supported.	Nil - Moderate, extent of ecosystem service and response to management are both unpredictable	Low, uncertainty in extent of habitats and their response to management measures.
Fish for non-human consumption		Stocks reduced from potential maximum						
Gas and climate regulation	Low	Low	Nil	Minimal - Low, from restoring habitats.		Moderate, social cost of carbon	Minimal	Moderate
Natural hazard protection	Low	Low	Nil			Low	Nil	High
Regulation of pollution	Moderate, benthic communities regulate pollution	Low, major water quality issues to be dealt with through WFD ²¹	Nil	Low, protection could allow recovery of species that provide this service		Low, water quality in this area not affecting human welfare	Nil - Low	Moderate
Non-use value of natural environment	Moderate - High, variety of protected features, and contribution of the site to MPA network.	Non-use value of the site may decline	Nil	Low - Moderate. Protection of features of site from minor decline	Moderate – protection of features of site from decline, and allowing	Moderate – range of features means strong contribution to halting decline of marine biodiversity.	Nil - Moderate	Low - Moderate, extent of features recovery in response to management measures, and value to

¹⁹ <http://www.gov.scot/Publications/2015/01/4022>

²⁰ Maximum Sustainable Yield

²¹ Water Framework Directive

	have non-use value.				recovery			society, are uncertain
Recreation	Moderate - High, active dive sites, angling and recreational boating routes	Moderate - High, including tourism activities. Angling may be reduced by damage to features	Nil	Low - Moderate, Angling benefits and biodiversity encountered by divers and recreational boaters are protected from possible decline, and could recover. Designation could enhance tourism activity.	Moderate, extensive activities, but substitutes are available.	Low - Moderate, enhancement of activities through improved angling and visitor experiences.	Low - Moderate, extent of change from management measures uncertain	
Research and Education	Moderate	Low, small number of biological features have research value and there are substitutes	Nil	Low, protection of key characteristics of site from decline, possible recovery, improving future research opportunities.	Low for individual features. Moderate for opportunity to understand response of wide range of features to management	Low	Low - Moderate, extent to which research uses site in future uncertain	
Total value of changes in ecosystem services			Nil for low scenario, moderate for upper scenarios			Nil - Moderate	Low	

These ecosystem services provided by effective management of the MPA contributes to the wider benefits that the MPA network can deliver:

Benefits of MPAs

Benefit	Habitat(s)
<p>Supporting fish and shellfish fisheries.</p> <p>Habitats within the MPA network can be important to various different aspects of fish/shellfish life history – such as for feeding, for spawning or for recruitment/ juveniles (e.g. providing shelter from predation).</p>	<ul style="list-style-type: none"> • Kelp – including lobster, crab and wrasse (the latter used in aquaculture industry). • Maerl beds – Research showing that scallop spat preferentially settle on maerl. Also provide feeding areas for juvenile cod. • Burrowed mud – main habitat for Nephrops / langoustine. This is the most lucrative shellfishery in Scotland's seas. Worth £64.6 million in 2013 and accounting for 15% of the total value of all Scottish landings. • Seagrass beds – potential cod nursery habitat. • Rocky/boulder and cobble reefs – providing habitat used for European spiny lobster, velvet crabs, lobster and edible crab. Some overlap with kelp (see above).

<p>Carbon capture and storage(blue carbon)</p> <p>MPAs with particular features play a role in storing blue carbon.</p>	<ul style="list-style-type: none"> • Kelp • Maerl beds • Seagrass beds • Bivalve beds e.g. horse mussels and blue mussels, flame shell beds • Burrowed mud • Cold water corals
<p>Coastal defence</p>	<ul style="list-style-type: none"> • Kelp and rocky reefs – reduce the wave energy reaching the shore, thus reducing coastal erosion.
<p>Ensuring a supply of sediment – including to beaches and machair/dune systems</p>	<ul style="list-style-type: none"> • Maerl beds • Shallow tide-swept coarse sands with burrowing bivalves • Horse mussel beds • Flame shell beds
<p>Improving water clarity/quality</p>	<ul style="list-style-type: none"> • Horse mussels and blue mussels – through filtering material out of the water. • Seagrass beds – directly through attracting sediment onto the plants' surface and indirectly through the filter feeders that live amongst the seagrass.
<p>Stabilising coastal sediment</p>	<ul style="list-style-type: none"> • Seagrass beds – through holding sediments with their roots and establishing beds. • Blue mussel beds – through binding sediments together through byssus threads and establishing beds.
<p>Providing wildlife experiences (recreation and tourism)</p>	<ul style="list-style-type: none"> • This is more often applied to species – seabirds, whales, dolphins etc, that are the focus of most wildlife tourism in Scotland. But also applies to species that are the focus of recreational angling e.g. common skate. • Rockpools – particularly inspiring for children. • Sea caves and reefs – providing underwater adventures for divers and snorkellers. • Blue mussel and horse mussel beds, maerl beds

Costs of introducing fisheries management measures

Fisheries management measures

Costs have been evaluated based on the implementation of management measures. Where feasible costs have been quantified, where this has not been possible costs are stated qualitatively. All quantified costs have been discounted in line with HM Treasury guidance using a discount rate of 3.5%. Discounting reflects the fact that present consumption is preferred to future consumption. All costs are presented in 2015 prices.

Commercial Fisheries

The management measures will further the conservation objectives of the MPA. The measures will apply across the whole footprint of the MPA.

Management Measures	
Gear Type	Measure
Demersal trawls	Prohibited across the whole MPA. By way of derogation trawls may be deployed in specific zones by vessels of <150 gross tonnage.
Creel Fishing, long lining, and set nets	No measures proposed at this time. Further discussions on measures for recovery of maerl beds and flames shell beds to take place.
Suction dredging, mechanical dredging and beam trawling	Prohibited across the whole MPA

Commercial fisheries costs are presented below in terms of Gross Value Added (GVA). GVA more accurately reflects the wider value of the sector to the local area and economy beyond the market value of the landed catch. Stating costs purely in terms of landed value would overstate the true economic cost of not fishing. Costs are also presented in terms of the reduction in full-time equivalent (FTE) employment. It is also possible that effort not continuing in the area could be transferred to other locations resulting in reduced loss of income. GVA estimates include both direct and indirect impacts, which accounts for upstream supply chain impacts. Initial landings values, used to derive the final costs, are averaged over a period from 2010 - 2014 in order to smooth year-on-year fluctuations.

Assessment of over 15m data

This dataset is an amalgamation of logbook and landings data with Vessel Monitoring System (VMS) data. Logbook and landings data for ICES rectangles where there are protected areas is identified. The VMS data for each corresponding date and vessel in the logbook data is identified. It is filtered by speed (between 0 and 5 knots) to limit it to reports that are indicative of fishing activity. The two data sets are then merged giving each VMS report a notional value. Each VMS report is considered to be worth 2 hours of effort unless it is clear that the reporting frequency is much greater. In that circumstance adjustments have been made.

There are some potential sources of error in this estimate. If the wrong rectangle has been recorded in the logbook then data will be omitted. The total catch value for the trip is divided in proportion with the daily logged amount for a species. Therefore it is impossible to account for possible variations in catch quality which in turn influences the actual daily value.

In some cases a vessel may have a reported position outside an area in consecutive reports. If the intervening time was spent inside an area then this is missed by the analysis. By the same token a vessel may have just entered the area before a VMS report meaning it is included in the analysis.

This resulting dataset is then plotted using a Geographic Information System (GIS) and VMS reports that would be affected by a particular management approach identified. These are then summarised into the tables in this document for each site detailing the percentage of activity affected.

Assessment of under 15m data

For vessels in the range of 10 to 15m there is a requirement to keep a logbook detailing catches at ICES rectangle level. VMS is presently being rolled out to vessels in this size range but there is no industry wide dataset available yet. Following the requirement for over 12m boats to have VMS there is also one year's worth of VMS data for some 12m-15m vessels . This has been utilised as a validation test.

Marine Scotland undertook the Scotmap project to get a better understanding of the distribution of activities by under 15m vessels. It provides an improved spatial resolution of where under 15m activity occurs within a ICES rectangle data. Fishing areas were identified by fishermen during the interviews and recorded in GIS format, and the opportunity to provide an estimate value given.

All of the fishing areas were processed into an amalgamated raster layer with 800 cells per ICES statistical rectangle with an average area of ca. 4.20 km². This results in each of the 800 cells having a share of the overall value of the ICES rectangle. However not all vessels participated in Scotmap meaning that the values are an under estimate of total fleet activity, but can be used on a proportional basis. For under 15m vessels, where VMS data is not available, it provides a better spatial resolution of data than looking at values at an ICES rectangle level. However given that it provides an aggregated average value it does not present data at an individual vessel level there will be limits to its accuracy.

In order to analyse data to finer spatial scales to assess the value of MPAs and the potential impact of management measures each Scotmap grid has been divided further into 25 equally sized smaller grids (this assumes that value is uniformly distributed across the Scotmap grid cell). From the Scotmap data the total value of each ICES rectangle for a particular gear type was calculated. In the same manner the value of each MPA was calculated using each smaller grid, and then the value of the management measures. This allows the percentage of an ICES rectangle catch that is within an MPA and/or management zone to be calculated. These percentages are then multiplied against all under 15m recorded landings for that ICES rectangle to ascertain the estimated value of the MPA, and the impact of the management measures. This provides a more robust estimate than the previously adopted approach of estimating the proportion of activity affected using the same percentage identified from over 15m vessel data.

There are potential sources of error within this estimate. As mentioned it assumes that vessels which did not participate in Scotmap have the same distribution of activity in an ICES rectangle. It also assumes that the proportion of fishing effort in the same as the proportion of value. This may not always be the case due to variations in catch quality. Finally all data is apportioned to the ICES rectangle recorded in the logbook, meaning any errata at this point cannot be accounted for.

Costs, Scottish vessels (£)					
		>15m vessels		<15m vessels	
Average Annual Revenue Affected (2010 – 2014, 2015 prices)		Whitefish Trawls	6,761	Whitefish Trawls	2,286
		Nephrops Trawls	48,034	Nephrops Trawls	155,748
		Other Trawl	24	Other Trawl	581
		Dredge	30,552		
Revenue affected (present value, 2015-2034, 2015 prices, Scottish vessels)					
3,467,749					

GVA affected (present value, 2015-2034, 2015 prices, Scottish vessels)
2,068,547

The total economic impact for Scottish vessels (measured in GVA, across the twenty year assessment period) is **£2,068,547**. By comparison, for all UK vessels the total is £2,161,331.

For under-15m vessels costs presented are likely an overestimate given the level of aggregation within the data (i.e. the data does not allow for the identification of specific gear-type attributes beyond their headline categorisation).

Combined impact in relation to site, Scottish vessels (£)

Average annual revenue site total	1,637,730
Average annual revenue impact of measures	243,995
Estimated annual revenue of the 108 vessels affected	27,731,109
Total combined revenue impact	0.88%

Total revenue for all gear types within the MPA site is £1,637,730. The impact on revenue as a result of management measures within the MPA is £243,995 (14.90% of the total site revenue). For this MPA, the overall revenue impact on the 108 affected vessels is just 0.88% (based on their total combined revenue of £27,731,109).

Employment (direct and indirect reduction)

5.1 jobs

It should be borne in mind that these costs are based on the affected vessels stopping fishing. Within the dataset used for these calculations there were more than 100 vessels. This means a relatively small impact on many individuals. Therefore it is anticipated that these vessels will make adjustments to their fishing practices to comply with the measures. In other words they will still have the ability to take the same economic value from relatively nearby fishing grounds.

Employment impacts²² presented assume a linear relationship between output and employment. In reality such a relationship may not hold. Other non-quantified costs include: potential conflict with other fishing vessels, environmental consequences of targeting new areas, longer steaming times and increased fuel costs, changes in costs and earnings, gear development and adaptation costs, and additional quota costs.

Public Sector:

The decision to introduce fisheries management measures would result in costs being incurred by the public sector in the following areas:

- Preparation of Statutory Instruments

²²Employment impacts are derived from the Scottish Government's Input-Output tables - <http://www.scotland.gov.uk/Topics/Statistics/Browse/Economy/Input-Output>

- Compliance and enforcement

The majority of these costs will accrue at the national level and as such have not been disaggregated to site level. Only the preparation of Statutory Instruments has been estimated at the site level.

Site-specific Public Sector Costs (£m)	
Preparation of Statutory Instruments (present value, 2015-2034, 2015 prices)	0.005

Total Costs:

Total quantified costs are presented in present value terms at 2015 prices. Commercial fisheries costs to Scottish vessels are presented in terms of GVA.

Total Costs (£m)	
Sector	Cost
Commercial Fisheries	2.069
Public Sector	0.005
Total Costs	2.074

Scottish Firms Impact Test

Many of the businesses affected may include some small and micro-sized firms. For the commercial fisheries sector the average number of fishermen per Scottish vessel in 2013 was 2.5. Additional costs caused by the introduction of fisheries management measures at the Wester Ross MPA have the potential to fall on small businesses.

Competition Assessment

The introduction of fisheries management measures at the Wester Ross MPA may impact commercial fisheries activity operating within a given spatial area.

Competition Filter Questions

Will the proposal directly limit the number or range of suppliers? e.g. will it award exclusive rights to a supplier or create closed procurement or licensing programmes?

No. It is unlikely that the introduction of fisheries management measures will directly limit the number or range of suppliers.

Will the proposal indirectly limit the number or range of suppliers? e.g. will it raise costs to smaller entrants relative to larger existing suppliers?

Limited / No Impact. The introduction of fisheries management measures could affect the spatial location of commercial fisheries activity and may restrict the output capacity of this sector. However, restrictions on fishing locations may well be negated by displacement i.e. vessels fishing elsewhere. It is not expected that the distribution of additional costs will be skewed towards smaller entrants relative to larger existing suppliers.

Will the proposal limit the ability of suppliers to compete? e.g. will it reduce the channels suppliers can use or geographic area they can operate in?

No. The introduction of fisheries management measures will not directly affect firms' route to market or the geographical markets they can sell into.

Will the proposal reduce suppliers' incentives to compete vigorously? e.g. will it encourage or enable the exchange of information on prices, costs, sales or outputs between suppliers?

No. The introduction of fisheries management measures is not expected to reduce suppliers' incentives to compete vigorously.

Test run of business forms

It is not envisaged that the introduction of fisheries management measures will result in the creation of new forms for businesses to deal with, or result in amendments of existing forms.

Legal Aid Impact Test

It is not expected that the management measures will have any impact on the current level of use that an individual makes to access justice through legal aid or on the possible expenditure from the legal aid fund as any legal/authorisation decision impacted by the management measures will largely affect businesses rather than individuals.

Discussions with Scottish Government Legal colleagues are on-going but at this stage it is not envisaged that the introduction of fisheries management measures will have any legal aid impacts.

Enforcement, sanctions and monitoring

Responsibility for compliance, monitoring and enforcement of the measures will be carried out by Marine Scotland.

Implementation and delivery plan

The management measures will be delivered by Statutory Instrument on 01 February 2016.

Post-implementation review

There is a 6 yearly marine protected area network review cycle and this includes MPAs like Wester Ross. The need for these measures will be reviewed as part of that wider review in 2024 and every 6 years thereafter. However an interim review will take place if it is considered necessary.

Summary

The Wester Ross MPA was designated under the Marine (Scotland) Act 2010 in August 2014. These measures are proposed to ensure that the MPA is well-managed and that the conservation objectives for each protected feature are furthered.

SSI 2016/90

Title of Instrument:	Loch Sunart to the Sound of Jura Marine Conservation Order 2016 (SSI 2016/90)
Type of Instrument:	Negative
Laid Date:	4 February 2016
Circulated to Members:	26 February 2016
Meeting Date:	2 March 2016
Minister to attend meeting:	No
Motion for annulment lodged:	No
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?	No
Reporting deadline:	21 March 2016

Delegated Powers and Law Reform Committee

12. At its meeting on 23 February 2016, the Committee considered the following instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

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

Purpose

The Loch Sunart to the Sound of Jura Nature Conservation Marine Protected Area Order 2014 ("the 2014 Order") designated Loch Sunart to the Sound of Jura as a nature conservation marine protected area ("Loch Sunart to the Sound of Jura MPA"). The 2014 Order provides that common skate, a mobile species, and the Quaternary of Scotland which is a geomorphological feature are protected features within the Loch Sunart to the Sound of Jura MPA.

This Order furthers the stated conservation objectives for the Loch Sunart to the Sound of Jura MPA insofar as they relate to common skate and protects the Firth of Lorn Special Area of Conservation ("Firth of Lorn SAC") in respect of reefs.

EXPLANATORY NOTE

As per purpose above and including:

Article 11(1) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy (OJ L 354, 28.12.2013, p.22)

empowers EU member States to adopt conservation measures which are necessary for compliance with obligations under EU environmental legislation.

The Loch Sunart to the Sound of Jura Nature Conservation Marine Protected Area Order 2014 (“the 2014 Order”) designated Loch Sunart to the Sound of Jura as a nature conservation marine protected area (“Loch Sunart to the Sound of Jura MPA”). The 2014 Order provides that common skate, a mobile species, and the Quaternary of Scotland which is a geomorphological feature are protected features within the Loch Sunart to the Sound of Jura MPA.

This Order furthers the stated conservation objectives for the Loch Sunart to the Sound of Jura MPA insofar as they relate to common skate and protects the Firth of Lorn Special Area of Conservation (“Firth of Lorn SAC”) in respect of reefs.

Article 3 and Schedule 1 describe the area protected by this Order (“the protected area”). It comprises part of the Loch Sunart to the Sound of Jura MPA, the whole of the Firth of Lorn SAC which is described in article 2 and Schedule 3, and an area which is outwith both of those designated areas.

Article 4 prohibits and regulates activities within the protected area.

Article 4(2) provides that a person must not deploy or use any fishing gear within the protected area. The term “fishing gear” is defined in article 4(6) of the Order.

Article 4(3) regulates the storage of fishing gear on fishing vessels within the protected area.

Article 4(4) provides that the provision made by the Order in prohibiting and regulating activities is subject to certain specified exceptions. Article 4(4)(a) provides that the prohibitions and regulations do not apply to activities carried out in the protected area for the purpose of saving life or for the purpose of securing the safety of a vessel, aircraft or marine structure. Article 4(4)(b) provides that mechanical dredging and, provided that certain specified equipment is not used, demersal trawling (other than beam trawling) by fishing vessels, is permitted within certain specified parts of the protected area, which are described in Schedule 2.

Article 4(5) provides that the exceptions to the prohibition which are provided by article 4(4)(b) only apply within certain specified parts of the protected area at certain specified times of the year.

Article 5 provides that the Scottish Ministers may issue permits authorising fishing within the protected area only for the purpose of scientific research which would, apart from such a permit, be unlawful under the Order. The article makes provision regarding the procedure which applies to the making of applications for permits and the determination of such applications.

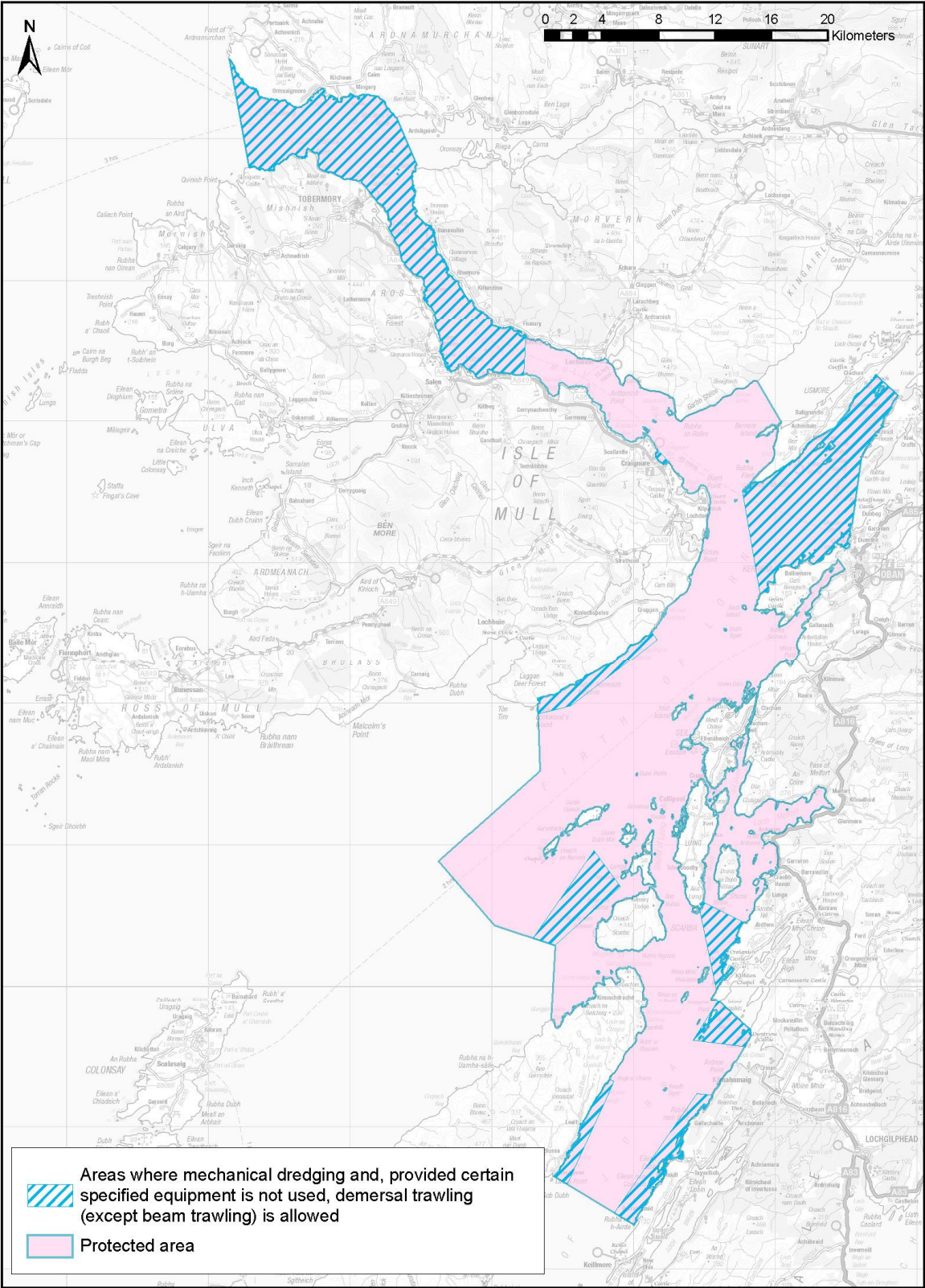
Article 6 provides that paragraph (b) of section 97(1) of the Marine (Scotland) Act 2010 does not apply in relation to an offence under section 94 of that Act of contravening this Order or an offence under section 95 of that Act.

Article 7 provides that the Inshore Fishing (Prohibition Methods of Fishing) (Firth of Lorn) (No. 2) Order 2007 (“the 2007 Order”) is revoked. The provision made by the 2007 Order is broadly remade by this Order.

A person who contravenes this Order commits an offence and is liable on summary conviction to a fine of up to £50,000, and on conviction on indictment to an unlimited fine. The penalty on summary conviction under this Order is greater than that which is provided by the 2007 Order.

A business and regulatory impact assessment has been prepared in relation to this Order and placed in the Scottish Parliament Information Centre. A copy of this can be obtained from Marine Scotland, the Scottish Government, Victoria Quay, Edinburgh, EH6 6QQ.

An illustrative map showing that part of the Loch Sunart to the Sound of Jura MPA, the Firth of Lorn SAC, and that area which is outwith both the Loch Sunart to the Sound of Jura MPA and the Firth of Lorn SAC in respect of which the Order applies is attached to this note.



ILLUSTRATIVE PURPOSES ONLY. NOT FOR NAVIGATION. Created by Scottish Government (Marine Scotland) 2015. g0885. © Crown Copyright. All rights reserved. Ordnance Survey Licence No. 100024655. CRS: British National Grid. Datum: OSGB 1936. Standard Parallel: 0°0'0.00"

POLICY NOTE

The above instrument was made in exercise of the powers conferred by sections 85(1)(a), (1)(d), (2) and (4), 86(1) and (3) and 92(1) and (5) of the Marine (Scotland) Act 2010. The instrument is subject to negative procedure.

Policy Objectives

The purpose of this instrument is to further the conservation objectives of the Loch Sunart to Sound of Jura Nature Conservation Marine Protected Area ("Loch Sunart to Sound of Jura MPA"), to conserve common skate, which is the protected feature. The designation of the Loch Sunart to Sound of Jura MPA took effect on 07 August 2014. In addition this instrument also protects the reef habitats of the Firth of Lorn Special Area of Conservation.

Section 3 of the Marine (Scotland) Act 2010 provides that Scottish Ministers and public authorities must act in a way best calculated to further the achievement of sustainable development, including the protection and enhancement of the health of the Scottish marine area. Scottish Ministers consider this Marine Conservation Order necessary to further the conservation objectives of the Loch Sunart to Sound of Jura MPA.

Scottish Ministers are empowered by Article 11(1) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy²³ to adopt conservation measures which are necessary for compliance with obligations under EU environmental legislation. This instrument will make a contribution towards compliance with the EU Marine Strategy Framework Directive (Directive 2008/56/EC of the European Parliament and of the Council establishing a framework for community action in the field of marine environmental policy).

The instrument prevents certain fishing methods from taking place in the Loch Sunart to Sound of Jura MPA. It also regulates the use of the Loch Sunart to Sound of Jura MPA by certain other fishing methods.

Consultation

A consultation on potential management approaches took place between November 2014 and February 2015. In response to that consultation Scottish Ministers published notice of their intention to make this instrument in June 2015.

Section 87 of the Marine (Scotland) Act 2010 sets out the consultation procedure which applies before a Marine Conservation Order may be made. Representations were invited from stakeholders between June and August 2015, and again between December 2015 and January 2016.

For the first consultation there were a variety of representations highlighting changes that could be made to improve the measures from a fisheries perspective. Some of these changes were adopted for the second consultation, and other revisions were

²³ (OJ L 354, 28.12.2013, p.22)

considered to be an improvement from an economic impact perspective. Many of the responses to the second consultation repeated views already expressed. New information regarding potential skate egg laying areas came to light during the 2nd consultation and will be investigated after implementation of the measures.

Having taken into account all the representations received, the Scottish Government concluded that the proposal from the second consultation should remain unchanged.

Impact Assessments

An equality impact assessment screening has been completed on the Loch Sunart to Sound of Jura Marine Conservation Order 2016. This concluded that there were no equality issues requiring full assessment.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been prepared and is available on the Scottish Government website.

BUSINESS AND REGULATORY IMPACT ASSESSMENT

Title of Proposal

Loch Sunart to the Sound of Jura, Marine Protected Area (MPA)
(Incorporating Firth of Lorn SAC but excluding the Loch Sunart part of the MPA)

Introduction and Revision of Fisheries Management Measures, Socio-Economic Analysis

Purpose and intended effect

• Background

The Scottish Government is committed to a clean, healthy, safe, productive and biologically diverse marine and coastal environment that meets the long-term needs of people and nature. In order to meet this commitment our seas must be managed in a sustainable manner - balancing the competing demands on marine resources. Biological and geological diversity must be protected to ensure our future marine ecosystem is capable of providing the economic and social benefits it yields today.

Marine Protected Areas (MPAs) are designated under the Marine (Scotland) Act 2010. Special Areas of Conservation (SACs) are designated under the EU Habitats Directive. Loch Sunart to the Sound of Jura MPA²⁴ was designated in 2014. Firth of Lorn SAC²⁵ was designated in 2005.

A change in thinking on how the protective provisions of the EU Habitats Directive apply to fishing led to a review of existing management arrangements for existing SACs alongside the development of new measures for newly designated MPAs.

During the last ice age glaciers scoured the surface of Scotland eroding areas of soft rock to form glens, leaving the harder, more resistant rock behind as mountains. When temperatures rose and the

²⁴ <http://www.gov.scot/Resource/0045/00456493.pdf>

²⁵ http://gateway.snh.gov.uk/sitelink/siteinfo.jsp?pa_code=8256

ice retreated, the sea flooded the most deeply eroded channels leaving them submerged along the current coastline. Stunning examples of these underwater channels or troughs are scattered throughout the Loch Sunart to Sound of Jura MPA providing shelter to the reproductively mature common skate.

Summary of Features and Conservation Objectives - Loch Sunart to the Sound of Jura MPA

Feature	Conservation Objective
Common skate	Conserve

Summary of Features and Conservation Objectives – Firth of Lorn SAC

Feature	Conservation Objective
Reefs	Maintain

• **Objective**

SACs are designed to protect internationally important habitats and species. They are designated under the EU Habitats Directive, which is transposed into Scottish law through the Habitats Regulations. SACs form part of the European network of Natura 2000 sites²⁶. The Scottish suite of inshore marine SACs currently incorporate the full range of habitats and species listed in Annexes I and II of the EU Habitats Directive:

All EU member states are obligated to designate SACs for a range of habitats and species as listed in the EU Habitats Directive (the Directive). The Directive requires that the sites are managed to ensure that the conservation objectives of the qualifying features are achieved.

Article 6 of the Directive defines how SACs should be managed and protected. The designation of these sites requires the implementation of conservation measures which correspond to the ecological requirements of Annex I 'habitats' and Annex II 'species' present on the site. (Article 6(1)).

Appropriate steps should also be taken to avoid, within the SACs, the deterioration of natural habitats and habitats of species, as well as significant disturbance to species for which the site is designated. (Article 6(2)).

In addition, any plan or project (e.g. new policy or development) should be assessed to ensure that it does not have any negative implications for an SAC. Where there is a likely significant effect (or it cannot be ruled out) the proposal must undergo an appropriate assessment to determine the implications for the site. Subject to article 6(4), authority must only be given where it can be established that site integrity will not be adversely affected. (Article 6(3)).

A plan or project may be authorised even if such assessment shows negative implications for an SAC only where there are no alternative solutions and where the plan or project must be carried out for imperative reasons of overriding public interest. Where this is the case all compensatory measures necessary must be taken to ensure that the Natura 2000 network is protected. More stringent controls are in place where the SAC hosts a priority habitat type and/or a priority species. (Article 6(4)).

Historically the Scottish Government has generally relied upon article 6(2), as read with Article 6(1), to ensure that fisheries were managed appropriately within SACs. However, a review of the requirements of the Directive has concluded that Article 6(3) should also apply to changes in fisheries policy, and

²⁶ Natura is a collective term used for Special Areas of Conservation (SACs) and Special Protection Areas (SPAs).

other fisheries management plans. This means that every change in fisheries policy or fisheries management plan (or the development of new management arrangements) would require to be tested against the provisions in Article 6(3).

Without having requisite fisheries management measures in place for each SAC it would be virtually impossible to rule out a likely significant effect beyond reasonable scientific doubt. This means that even beneficial changes in policy or management plans could be prevented from occurring. However by putting the necessary fisheries management measures in place such assessment under article 6(3) is unlikely to be required because there could be no significant effect. This also applies to SACs where little fishing activity takes place.

The purpose of Nature Conservation MPAs is to safeguard nationally important species, habitats and geology across Scotland's marine environment. MPAs have been designed to complement existing site-based measures. The intention is to manage MPAs under the principle of sustainable use.

An MPA network will support greater national and international ecological coherence as stipulated by:

- the Marine (Scotland) Act 2010
- the Marine and Coastal Access Act 2009
- the Convention on Biological Diversity
- the World Summit on Sustainable Development
- the OSPAR²⁷ convention
- the European Union Marine Strategy Framework Directive

Designation of MPAs are based primarily on scientific evidence, and MPA search features have been used to underpin the selection of MPA locations.

Evidence in this BRIA is drawn from the work of statutory nature conservation body SNH²⁸ and consultants ABPmer and eftec²⁹. This has been updated at required.

It brings together the science-led arguments for management and the projected potential social and economic consequences of such action. The site has been identified for designation as an MPA due to the confirmed presence of biodiversity and geodiversity features detailed above.

This BRIA examines the socio-economic impact of introducing new fisheries management measures to further the conservation objectives for the 4 protected areas in question. The assessment period covers the 20 year period from 2015 to 2034 - reflecting the time horizon within which the majority of impacts are expected to occur. As with any socio-economic assessment related to environmental measures, the findings should be considered as estimates.

• **Rationale for Government intervention**

Scotland's marine environment provides: food; energy sources (wind, wave and tidal power, minerals and fossil fuels); routes and harbours for shipping; tourism and recreational opportunities; and sites of cultural and historical interest. Scotland's seas contain important distinctive habitats and support a diverse range of species that require protection in order to be conserved or for recovery to be facilitated. Due to the competing demands placed upon Scotland's marine resources, more effective management is required so that a balance between conservation and sustainable use can be struck.

²⁷ <http://www.ospar.org/>

²⁸ <http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/national-designations/mpas/mpa-sju/>

²⁹ <http://www.scotland.gov.uk/Publications/2013/08/9645>

Currently there is not sufficient protection in place to ensure that the marine environment is properly protected and complex ecosystems safeguarded. An ecologically coherent network of well-managed protected areas is vital to conserve and regenerate our seas, in turn protecting the many goods and services they provide now, and for generations to come.

Contribution to an Ecologically Coherent network

Scotland's seas support a huge diversity of marine life and habitats, with around 6,500 species of plants and animals, with plenty more to be found in the undiscovered depths of the north and west of Scotland. Our seas account for 61% of UK waters and remain at the forefront of our food and energy needs, through fishing, aquaculture, oil and gas, and new industries such as renewables, as well as recreation activities and ecotourism. An ecologically coherent network of well-managed MPAs is vital to conserve and regenerate our seas, in turn protecting the many goods and services they provide now, and for generations to come. Furthermore it is likely that a network of Nature Conservation MPAs will demonstrate beneficial network effects, i.e. the benefit from the network as a whole may be greater than the sum of the benefits from the individual MPAs. These effects are potentially of great importance in marine protected areas because of the lack of barriers and mobility of species.

Consultation

A public consultation ran from 11 November 2014 to 02 February 2015 and included 14 local level drop-in events. Feedback from the events and formal consultation responses helped finalise the management measures which this assessment is based on. In addition a further period of 8 weeks was provided for representations from 11th June to 9th August on the draft MCO. An additional 4 weeks were provided for final changes between 18 December 2015 and 18 January 2016.

Introduction of fisheries management measures

The formal introduction of fisheries management measures at the Loch Sunart to the Sound of Jura site would provide recognition and protection to the natural features of the site while also contributing to the wider Scottish and UK marine conservation network.

• Sectors and groups affected

The following sectors have been identified as present (or possibly present in the future) within the Loch Sunart to the Sound of Jura site and are potentially affected by the management measures:

- Commercial Fisheries
- Public Sector

Benefits of introducing fisheries management measures

Fisheries management measures will help to conserve the range of biodiversity in Scottish waters. Such measures will complement (not duplicate) other types of designation and provide an essential contribution to establishing an ecologically coherent network of marine protected areas. In the absence of such measures, there would be areas of Scotland's marine environment that would continue to be unprotected.

Appropriate fisheries management measures will reduce the risk that the extent, population, structure, natural environmental quality and processes of features protected will decrease or degrade over time. The risk that the features will be adversely affected by human activities is greater if not protected by management measures. In addition, beyond a certain point of degradation, changes to ecosystems may be large and irreversible, resulting in a significant societal cost. Avoiding such a reduction in ecosystem services is thus a key benefit of introducing fisheries management measures. However doing nothing is expected to result in environmental decline, with a corresponding declining benefit stream. These measures will contribute towards maintaining these benefits.

While it may not be possible with current levels of research to monetise benefits with a satisfactory degree of rigour, it is clear that many of the benefits relate to aspects of our lives that we take for granted and for which it is good practice and common sense to maintain through protection measures.

Ecosystem Services Benefits

Ecosystems are very complex, and it is thought that the more complex an ecosystem is the more resilient it is to change. Therefore, if it is damaged or if a species or habitat is removed from that ecosystem, the chances of survival for those services reduce as the ecosystem becomes weaker. However, by conserving or allowing the species and habitats that make up that ecosystem to recover, we can be more confident of the continuation of the long-term benefits the marine environment provides.

Non-use value of the natural environment is the benefit people get simply from being aware of a diverse and sustainable marine environment even if they do not themselves 'use it'. We take for granted many of the things we read about or watch, such as bright colourful fish, reefs and strange shaped deep sea curiosities, to lose them would be a loss to future generations that will not be able to experience them. Due to the scientific uncertainty involved it is challenging to put a true value on this, but the high quality experience and increasing knowledge of Scotland's seas can be better preserved through measures such as MPAs. It is expected that non-use value will be attained as a result of designation both from the knowledge that the features are receiving adequate protection along with the wider conservation objectives that designation supports.

Whilst ecosystem services benefits at an individual site level cannot be easily calculated, the non-use value to Scottish households of marine conservation in Scottish waters generated by a well-functioning MPA network as a whole is estimated to be within the range of £239–583 million⁴ over the 20 year assessment period.

There could be a major transformative effect on inshore habitat and a significantly enhanced flow of environmental goods and services. We know the inherent capacity of the system and the flora and fauna that it could support. This would see the expansion of recreational activities such as diving, sea-angling, and other tourism alongside sustainable methods of fishing.

The Assessing the Options for Change³⁰ report modelled a number of scenarios to illustrate potential impacts from the exclusion of mobile fishing gear within 1nm or 3nm of the coast. In both cases the assumptions in the least favourable scenario produce results which suggest a net benefit to the economy over a 20 year period due to restrictions allowing fish populations to recover such that recreational angling and other forms of marine recreation could increase substantially. The quantified

³⁰ <http://www.gov.scot/Publications/2015/01/4022>

results of their analysis are not directly applicable to the proposed sites, due to the different spatial areas considered for restrictions. However, their conclusions support the interpretation that increases in recreational activity could offset, or exceed, losses in the fisheries sector as a result of management measures.

At the very least, more sustainable fishing activities can replace those excluded. There would be no impediment to methods such as hand diving and creel fishing for crabs, lobsters, and nephrops being able to produce the same value to the economy over the assessment period.

Anticipated Benefits to Ecosystem Services, Loch Sunart to Sound of Jura

Summary of Ecosystem Services Benefits arising from Designation of the Site as an MPA								
Services	Relevance to Site	Baseline Level	Estimated Impacts of Designation			Value Weighting	Scale of Benefits	Confidence
			Lower	Intermediate	Upper			
Fish for human consumption	Moderate. Habitats make contribution to food webs.	Stocks not at MSY ³¹ , Skate endangered	Nil	Minimal	Low, impact of preventing bycatch on populations of Skate and other species uncertain	Moderate. Common Skate is potentially a commercial species	Nil - Low	Low
Fish for non-human consumption		Stocks reduced from potential maximum						
Gas and climate regulation	Nil - Low	Nil - Low	Nil	Low	Low	Moderate	Nil - Minimal	High
Natural hazard protection	Low	Low	Nil, would not affect stability of coastline			Low	Nil	High
Regulation of pollution	Low	Low	Nil	Nil	Nil - Low, maintained by protecting seabed features	Low - Moderate, for recreational use of waters	Nil - Minimal	High
Non-use value of natural environment	Moderate – protected feature is endangered species, wrecks (designated under future Historic MPAs) and contribution of the site to MPA network, have non-use value.	Non-use value of the site may decline	Minimal, no change in key characteristics of site	Minimal	Low - Moderate, protection of key characteristics of site from decline, and/or allowing some recovery of values	Moderate	Minimal - Moderate	Low
Recreation	Moderate	42 active	Nil	Minimal	Low, slightly	Moderate,	Nil - Low	Moderate

³¹ Maximum Sustainable Yield

		dive sites, boating anchorages, sea angling			higher biodiversity encountered by divers and boating	important contribution to halting loss of one species		
Research and Education	Moderate	Biological feature has research value, and has few substitutes	Nil, no change in characteristics of site	Minimal	Low - Moderate, protection of key characteristics of site from decline, improving future research opportunities	Low	Nil - Low	Low
Total value of changes in ecosystem services			Nil for lower scenario, Minimal for intermediate scenario Low - Moderate for upper scenario				Nil - Low	Low

These ecosystem services provided by effective management of the MPA contributes to the wider benefits that the MPA network can deliver:

Benefits of MPAs

Benefit	Habitat(s)
<p>Supporting fish and shellfish fisheries.</p> <p>Habitats within the MPA network can be important to various different aspects of fish/shellfish life history – such as for feeding, for spawning or for recruitment/ juveniles (e.g. providing shelter from predation).</p>	<ul style="list-style-type: none"> • Kelp – including lobster, crab and wrasse (the latter used in aquaculture industry). • Maerl beds – Research showing that scallop spat preferentially settle on maerl. Also provide feeding areas for juvenile cod. • Burrowed mud – main habitat for Nephrops / langoustine. This is the most lucrative shellfishery in Scotland's seas. Worth £64.6 million in 2013 and accounting for 15% of the total value of all Scottish landings. • Seagrass beds – potential cod nursery habitat. • Rocky/boulder and cobble reefs – providing habitat used for European spiny lobster, velvet crabs, lobster and edible crab. Some overlap with kelp (see above).
<p>Carbon capture and storage(blue carbon)</p> <p>MPAs with particular features play a role in storing blue carbon.</p>	<ul style="list-style-type: none"> • Kelp • Maerl beds • Seagrass beds • Bivalve beds e.g. horse mussels and blue mussels, flame shell beds • Burrowed mud • Cold water corals
Coastal defence	<ul style="list-style-type: none"> • Kelp and rocky reefs – reduce the wave energy reaching the shore, thus reducing coastal erosion.

Ensuring a supply of sediment – including to beaches and machair/dune systems	<ul style="list-style-type: none"> • Maerl beds • Shallow tide-swept coarse sands with burrowing bivalves • Horse mussel beds • Flame shell beds 	
Improving water clarity/quality	<ul style="list-style-type: none"> • Horse mussels and blue mussels – through filtering material out of the water. • Seagrass beds – directly through attracting sediment onto the plants' surface and indirectly through the filter feeders that live amongst the seagrass. 	
Stabilising coastal sediment	<ul style="list-style-type: none"> • Seagrass beds – through holding sediments with their roots and establishing beds. • Blue mussel beds – through binding sediments together through byssus threads and establishing beds. 	
Providing wildlife experiences (recreation and tourism)	<ul style="list-style-type: none"> • This is more often applied to species – seabirds, whales, dolphins etc, that are the focus of most wildlife tourism in Scotland. But also applies to species that are the focus of recreational angling e.g. common skate. • Rockpools – particularly inspiring for children. • Sea caves and reefs – providing underwater adventures for divers and snorkellers. • Blue mussel and horse mussel beds, maerl beds 	

Costs of introducing fisheries management measures

Fisheries management measures

Costs have been evaluated based on the implementation of management measures. Where feasible costs have been quantified, where this has not been possible costs are stated qualitatively. All quantified costs have been discounted in line with HM Treasury guidance using a discount rate of 3.5%. Discounting reflects the simple actuality that present consumption is preferred to future consumption. All costs are presented in 2015 prices.

Commercial Fisheries:

The management measures will further the conservation objectives of the 2 protected areas. The measures apply to the combined footprint of the 2 protected areas and a small area outwith which is known to be used by common skate.

Management Measures	
Gear Type	Measure
Demersal trawl	Prohibit across the whole area but provide derogation to deploy

	gear in certain zones with trawl without a tickler chain attached.
Mechanical dredging	Prohibit across the whole area but provide derogation to deploy in certain zones.
Creel Fishing	No restriction
Suction dredging, long lining, bottom set nets, beam trawling	Prohibit across the whole area

Commercial fisheries costs are presented below in terms of Gross Value Added (GVA). GVA more accurately reflects the wider value of the sector to the local area and economy beyond the market value of the landed catch. Stating costs purely in terms of landed value would overstate the true economic cost of not fishing. Costs are also presented in terms of the reduction in full-time equivalent (FTE) employment. It is also possible that effort not continuing in the area could be transferred to other locations resulting in reduced loss of income. GVA estimates include both direct and indirect impacts, which accounts for upstream supply chain impacts. Initial landings values, used to derive the final costs, are averaged over a period from 2010 - 2014 in order to smooth year-on-year fluctuations.

Assessment of over 15m data

This dataset is an amalgamation of logbook and landings data with Vessel Monitoring System (VMS) data. Logbook and landings data for ICES rectangles where there are protected areas is identified. The VMS data for each corresponding date and vessel in the logbook data is identified. It is filtered by speed (between 0 and 5 knots) to limit it to reports that are indicative of fishing activity. The two data sets are then merged giving each VMS report a notional value. Each VMS report is considered to be worth 2 hours of effort unless it is clear that the reporting frequency is much greater. In that circumstance adjustments have been made.

There are some potential sources of error in this estimate. If the wrong rectangle has been recorded in the logbook then data will be omitted. The total catch value for the trip is divided in proportion with the daily logged amount for a species. Therefore it is impossible to account for possible variations in catch quality which in turn influences the actual daily value.

In some cases a vessel may have a reported position outside an area in consecutive reports. If the intervening time was spent inside an area then this is missed by the analysis. By the same token a vessel may have just entered the area before a VMS report meaning it is included in the analysis.

This resulting dataset is then plotted using a Geographic Information System (GIS) and VMS reports that would be affected by a particular management approach identified. These are then summarised into the tables in this document for each site detailing the percentage of activity affected.

Assessment of under 15m data

For vessels in the range of 10 to 15m there is a requirement to keep a logbook detailing catches at ICES rectangle level. VMS is presently being rolled out to vessels in this size range but there is no industry wide dataset available yet. Following the requirement for over 12m boats to have VMS there is also one year's worth of VMS data for some 12m-15m vessels . This has been utilised as a validation test.

Marine Scotland undertook the Scotmap project to get a better understanding of the distribution of activities by under 15m vessels. It provides an improved spatial resolution of where under 15m activity occurs within a ICES rectangle data. Fishing areas were identified by fishermen during the interviews

and recorded in GIS format, and the opportunity to provide an estimate value given.

All of the fishing areas were processed into an amalgamated raster layer with 800 cells per ICES statistical rectangle with an average area of ca. 4.20 km². This results in each of the 800 cells having a share of the overall value of the ICES rectangle. However not all vessels participated in Scotmap meaning that the values are an under estimate of total fleet activity, but can be used on a proportional basis. For under 15m vessels, where VMS data is not available, it provides a better spatial resolution of data than looking at values at an ICES rectangle level. However given that it provides an aggregated average value it does not present data at an individual vessel level there will be limits to its accuracy.

In order to analyse data to finer spatial scales to assess the value of MPAs and the potential impact of management measures each Scotmap grid has been divided further into 25 equally sized smaller grids (this assumes that value is uniformly distributed across the Scotmap grid cell). From the Scotmap data the total value of each ICES rectangle for a particular gear type was calculated. In the same manner the value of each MPA was calculated using each smaller grid, and then the value of the management measures. This allows the percentage of an ICES rectangle catch that is within an MPA and/or management zone to be calculated. These percentages are then multiplied against all under 15m recorded landings for that ICES rectangle to ascertain the estimated value of the MPA, and the impact of the management measures. This provides a more robust estimate than the previously adopted approach of estimating the proportion of activity affected using the same percentage identified from over 15m vessel data.

There are potential sources of error within this estimate. As mentioned it assumes that vessels which did not participate in Scotmap have the same distribution of activity in an ICES rectangle. It also assumes that the proportion of fishing effort in the same as the proportion of value. This may not always be the case due to variations in catch quality. Finally all data is apportioned to the ICES rectangle recorded in the logbook, meaning any errata at this point cannot be accounted for.

Costs, Scottish vessels (£)					
		>15m vessels		<15m vessels	
Average Annual Revenue Affected (2010 – 2014, 2015 prices)		Whitefish Trawls	112	Whitefish Trawls	1,080
		Nephrops Trawls	31,373	Nephrops Trawls	47,910
		Other Trawl	74	Other Trawl	1,186
		Dredge	125,092	Dredge	2,010
Revenue affected (present value, 2015-2034, 2015 prices, Scottish vessels)					
2,968,068					
GVA affected (present value, 2015-2034, 2015 prices, Scottish vessels)					
1,822,892					

The total economic impact for Scottish vessels (measured in GVA, across the twenty year assessment period) is **£1,822,892**. By comparison, for all UK vessels the total is £1,957,730.

For under-15m vessels costs presented are likely an overestimate given the level of aggregation within the data (i.e. the data does not allow for the identification of specific gear-type attributes beyond their headline categorisation).

Combined impact in relation to site, Scottish vessels (£)

Average annual revenue site total	1,882,346
Average annual revenue impact of measures	208,836
Estimated annual revenue of the 95 vessels affected	£20,897,063
Total combined revenue impact	1.00%

Total revenue for all gear types within the MPA site is £1,882,346. The impact on revenue as a result of management measures within the MPA is £208,836 (11.09% of the total site revenue). For this MPA, the overall revenue impact on the 95 affected vessels is just 1.00% (based on their total combined revenue of £20,897,063).

Employment (direct and indirect reduction)

4.4 jobs

It should be borne in mind that these costs are based on the affected vessels stopping fishing. Within the dataset used for these calculations there were more than 100 vessels. This means a relatively small impact on many individuals. Therefore it is anticipated that these vessels will make adjustments to their fishing practices to comply with the measures. In other words they will still have the ability to take the same economic value from relatively nearby fishing grounds.

Employment impacts³² presented assume a linear relationship between output and employment. In reality such a relationship may not hold. Other non-quantified costs include: potential conflict with other fishing vessels, environmental consequences of targeting new areas, longer steaming times and increased fuel costs, changes in costs and earnings, gear development and adaptation costs, and additional quota costs.

Public Sector:

The decision to introduce fisheries management measures would result in costs being incurred by the public sector in the following areas:

- Preparation of Statutory Instruments
- Compliance and enforcement

The majority of these costs will accrue at the national level and as such have not been disaggregated to site level. Only the preparation of Statutory Instruments has been estimated at the site level.

Site-specific Public Sector Costs (£m)

Preparation of Statutory Instruments (present value, 2015-2034, 2015 prices)	0.005
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Total Costs:

Total quantified costs are presented in present value terms at 2015 prices. Commercial fisheries costs

³²Employment impacts are derived from the Scottish Government's Input-Output tables - <http://www.scotland.gov.uk/Topics/Statistics/Browse/Economy/Input-Output>

to Scottish vessels are presented in terms of GVA.

Total Costs (£m)	
Sector	Cost
Commercial Fisheries	1.823
Public Sector	0.005
Total Costs	1.828

Scottish Firms Impact Test

This section will be informed by evidence gathered from our discussions with individual businesses during the consultation phase, and completed in the final BRIA.

Many of the businesses affected may include some small and micro-sized firms. For the commercial fisheries sector the average number of fishermen per Scottish vessel in 2013 was 2.5. Additional costs imposed by the introduction of fisheries management measures at the Loch Sunart to the Sound of Jura site have the potential to fall on small businesses.

Competition Assessment

The introduction of fisheries management measures at the Loch Sunart to the Sound of Jura site may impact commercial fisheries activity operating within a given spatial area.

Competition Filter Questions

Will the proposal directly limit the number or range of suppliers? e.g. will it award exclusive rights to a supplier or create closed procurement or licensing programmes?

No. It is unlikely that the introduction of fisheries management measures will directly limit the number or range of suppliers.

Will the proposal indirectly limit the number or range of suppliers? e.g. will it raise costs to smaller entrants relative to larger existing suppliers?

Limited / No Impact. The introduction of fisheries management measures could affect the spatial location of commercial fisheries activity and may restrict the output capacity of this sector. However, restrictions on fishing locations may well be negated by displacement i.e. vessels fishing elsewhere. It is not expected that the distribution of additional costs will be skewed towards smaller entrants relative to larger existing suppliers.

Will the proposal limit the ability of suppliers to compete? e.g. will it reduce the channels suppliers can use or geographic area they can operate in?

No. The introduction of fisheries management measures will not directly affect firms' route to market or the geographical markets they can sell into.

Will the proposal reduce suppliers' incentives to compete vigorously? e.g. will it encourage or enable the exchange of information on prices, costs, sales or outputs between suppliers?

No. The introduction of fisheries management measures is not expected to reduce suppliers'

incentives to compete vigorously.

Test run of business forms

It is not envisaged that the introduction of fisheries management measures will result in the creation of new forms for businesses to deal with, or result in amendments of existing forms.

Legal Aid Impact Test

It is not expected that the management measures will have any impact on the current level of use that an individual makes to access justice through legal aid or on the possible expenditure from the legal aid fund as any legal/authorisation decision impacted by the management measures will largely affect businesses rather than individuals.

Discussions with Scottish Government Legal colleagues are on-going but at this stage it is not envisaged that the introduction of fisheries management measures will have any legal aid impacts.

Enforcement, sanctions and monitoring

Responsibility for compliance, monitoring and enforcement of the measures will be carried out by Marine Scotland. .

Implementation and delivery plan

The management measures will be delivered by Statutory Instrument on 01 February 2016.

Post-implementation review

There is a 6 yearly marine protected area network review cycle and this includes MPAs like Loch Sunart to Sound of Jura MPA. The need for these measures will be reviewed as part of that wider review in 2024 and every 6 years thereafter. However an interim review will take place if it is considered necessary.

Summary

The Loch Sunart to Sound of Jura MPA was designated under the Marine (Scotland) Act 2010 in August 2014. The Firth of Lorn SAC was designated in 2005. These measures are proposed to ensure that these protected areas are well-managed and that the conservation objectives for each protected features are furthered.