The Scottish Parliament
Pàrlamaid na h-Alba

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

AGENDA

7th Meeting, 2015 (Session 4)

Wednesday 18 February 2015

The Committee will meet at 9.30 am in the Robert Burns Room (CR1).

1. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private today and at future meetings.

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

   Plant Health (Scotland) Amendment Order 2015 (SSI 2015/10); and
   Tweed Regulations Amendment Order 2015 SSI 2015/11).

3. **The Scottish Government's Wild Fisheries Review:** The Committee will take evidence from—

   Andrew Thin, Chair, Jane Hope, Member, and Michelle Francis, Member, Wild Fisheries Review Panel.

4. **Community Empowerment (Scotland) Bill:** The Committee will take evidence on stage 2 amendments 1-11 relating to the crofting community right-to-buy from—

   Derek Flyn, Director, Scottish Crofting Federation;

   Susan Walker, Convener, Crofting Commission;

   Sandy Murray, Chairman, NFUS Crofting Highands and Islands Committee;

   Gordon Cumming, Land Manager, The North Harris Trust;

   Peter Peacock, Policy Director, Community Land Scotland;

   Duncan Burd, Rural Affairs Sub-Committee, Law Society of Scotland.

5. **Disposal of local authority assets:** The Committee will consider a draft letter to the Scottish Government on the disposal of local authority assets.

6. **Dairy industry (in private):** The Committee will consider a draft letter to the Scottish Government.

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The papers for this meeting are as follows—

Agenda item 2

Negative instruments cover note	RACCE/S4/15/7/1

Agenda item 3

Wild fisheries review cover note	RACCE/S4/15/7/2
PRIVATE PAPER	RACCE/S4/15/7/3 (P)

Agenda item 4

Community Empowerment (Scotland) Bill cover note	RACCE/S4/15/7/4
PRIVATE PAPER	RACCE/S4/15/7/5 (P)

Agenda item 5

PRIVATE PAPER	RACCE/S4/15/7/6 (P)

Agenda item 6

PRIVATE PAPER	RACCE/S4/15/7/7 (P)

Subordinate legislation cover note for: SSI 2015/10; SSI 2015/11

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 2015/10

Title of Instrument:	Plant Health (Scotland) Amendment Order 2015 (SSI 2015/10)
Type of Instrument:	Negative
Laid Date:	19 January 2015
Circulated to Members:	13 February 2015
Meeting Date:	18 February 2015
Minister to attend the meeting:	No
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee:	No
Reporting Deadline:	2 March 2015

Delegated Powers and Law Reform Committee

4. At its meeting on 3 February 2015, the Committee considered the following instruments and determined that it did not need to draw the attention of the Parliament to any of the instruments on any grounds within its remit.

5. 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") to transpose and implement certain EU legislation. It also makes consequential amendments to the principal Order and revokes obsolete articles in previous amending instruments.

EXPLANATORY NOTE

As per purpose above and including:

Commission Implementing Decisions 2012/270/EU and 2014/679/EU

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 similaris (Gentner), Epitrix subcrinita (Lec.) and Epitrix tuberis (Gentner) (OJ L 132, 23.5.2012, p.18) was implemented in Scots law by S.S.I 2013/187. It has subsequently been amended by Commission Implementing Decision 2014/679/EU (OJ L 283, 27.9.2014, p.61) to make provision for the movement of tubers to packing facilities outside demarcated areas and for other purposes. Article 9(2)(f) substitutes item 19A of Part B of Schedule 4 to the principal Order to reflect the amendments made by Commission Implementing Decision 2014/679/EU. Article 6(c) also ensures full implementation of Commission Implementing Decision 2012/270/EU by inserting a new paragraph (3) into article 22 of the principal Order, with the effect that tubers which originate in an area demarcated for the purposes of that Commission Implementing Decision and which remain within such demarcated areas do not require to be accompanied by a plant passport if landed or moved within Scotland. At the time this Order is made however there are no demarcated areas within Scotland for the purposes of that Commission Implementing Decision.

Commission Implementing Decision 2012/697/EU

Commission Implementing Decision 2012/697/EU as regards measures to prevent the introduction into and the spread within the Union of the genus Pomacea (Perry) (OJ L 311, 10.11.2012, p.14) was implemented by S.S.I 2013/187. Article 6(c) ensures full implementation of this Commission Implementing Decision by inserting a new paragraph (3) into article 22 of the principal Order, with the effect that relevant plants originating in an area demarcated for the purposes of that Commission Implementing Decision and which remain within such demarcated areas do not require to be accompanied by a plant passport if landed or moved within Scotland. At

the time this Order is made however, there are no demarcated areas within Scotland for the purposes of that Commission Implementing Decision.

Commission Implementing Directive 2014/78/EU

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.27) makes certain technical amendments to the Annexes of 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 169, 10.7.2000, p.1) ("the Directive"). The amendments to the Annexes are transposed into Scots law by the amendments made to the principal Order in articles 7(1) and (2)(a), 8(1), and (2)(a) and (2)(c), 9(1)(b) to (e) and (h) to (x), 9(2)(c) to (n), 9(3), 10(1) and (2), 11(1)(a) and (b) and (2), 12(1)(a) and (b)and (2). A transposition table is included in the policy note for this Order. Certain of the amendments to the Annexes relate to forestry matters and these were transposed into Scots law by the Plant Health (Forestry) (Amendment) (England and Scotland) Order 2014 (S.I. 2014/2420).

Commission Implementing Directive 2014/83/EU

Commission Implementing Directive 2014/83/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 186, 26.6.2014, p.64) makes certain technical amendments to the Annexes of the Directive, which are transposed into Scots law by the amendments made to the principal Order in articles 8(2)(b), 9(1)(c), (2)(b) and (3), 11(2) and 12(2)(a). A transposition table is included in the policy note for this Order. Certain of the amendments to the Annexes relate to forestry matters and these were transposed into Scots law by the Plant Health (Forestry) (Amendment) (England and Scotland) Order 2014.

Commission Implementing Decision 2014/422/EU

Commission Implementing Decision 2014/422/EU setting out measures in respect of certain citrus fruits originating in South Africa to prevent the introduction into and the spread within the Union of Phyllosticta citricarpa (McAlpine) Van der Aa (OJ L 196, 3.7.2014, p.23) is implemented by the amendment made in article 8(1)(c), which updates the scientific name of the pest in Part A of Schedule 2 to the principal Order (relevant material which may not be landed in or moved within Scotland if that material is carrying or infected with plant pests). It is also implemented by articles 9(1)(f) to (g), which amend Part A of Schedule 4 to the principal Order (restrictions on the landing in and movement within Scotland of relevant material) to introduce the requirement for the relevant fruits to be accompanied by an official statement containing the prescribed declarations. Commission Implementing Decision 2014/497/EU Commission Implementing Decision 2014/497/EU as regards measures to prevent the introduction into and the spread within the Union of Xylella fastidiosa (Well and Raju) (OJ L 219, 25.7.2014, p.56) is implemented by articles 7(1)(b) and (2)(b) which amend Schedule 1 of the principal Order (plant pests which

shall not be landed in or spread within Scotland) to move the entry for Xylella fastidiosa (Well and Raju) from Part A (plant pests not known to occur in any part of the European Union) to Part B (plant pests known to occur in the European Union). It is also implemented by article 9(1)(x) which inserts item 86 into Part A of Schedule 4 to introduce the requirement for relevant plants originating in a third country in which Xylella fastidiosa (Well and Raju) is known to be present to be accompanied by an official statement containing the prescribed declarations. Article 9(2)(o) inserts item 40 into Schedule 4, Part B (relevant material from another part of the European Union, which may only be landed in or moved within Scotland if special requirements are satisfied) to introduce the requirement for relevant plants originating in an area demarcated for the purposes of Commission Implementing Decision 2014/497/EU to be accompanied by an official statement containing the prescribed declarations. Article 11(1)(c) adds a new paragraph 12 to 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 relevant plants which have been grown for part of their life, or moved through, a demarcated area must be accompanied by a plant passport when landed in or moved within Scotland. Article 6(c) adds a new paragraph (3) to article 22 which qualifies this requirement however, to the extent that the plant passport is only required if the relevant plants are moved outside “infected zones”, within the meaning of that Commission Implementing Decision. At the time this Order is made however there are no such infected zones in Scotland for the purposes of this Commission Implementing Decision. Article 12(1)(c) inserts a new paragraph 12 into 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 relevant plants which have been grown for part of their life, or moved through, a demarcated area must be accompanied by a plant passport on consignment to another part of the European Union.

Commission Implementing Decision 2014/690/EU

Commission Implementing Decision 2014/690/EU repealing Decision 2006/464/EC on provisional emergency measures to prevent the introduction into and the spread within the Community of Dryocosmus kuriphilus Yasumatsu (OJ L 288, 2.10.2014, p. 5) is implemented by article 9(1)(a) which revokes item 6a of Part A of Schedule 4 to the principal Order and by article 9(2)(a) which revokes item 4a of Part B of Schedule 4. These items had been inserted into the principal Order by S.S.I 2006/474 in order to implement Commission Implementing Decision 2006/464/EC.

No business and regulatory impact assessment has been prepared for this Order as there is no impact on the costs for Scottish business.

POLICY NOTE

Purpose of the instrument

This instrument amends the Plant Health (Scotland) Order 2005 (S.S.I. 2005/613) (‘the PH Order’) which contains measures to prevent the introduction and spread of harmful plant pests and diseases. This instrument transposes and implements:

- **Commission Implementing Directives: 2014/78/EU and 2014/83/EU:** The key changes of interest are establishment of the UK as a protected zone (areas that are free from plant pests usually established elsewhere in the EU) for Chestnut gall wasp (Dryocosmus kuriphilus Yasumatsu), Oak processionary moth (Thaumatopoea processionea L), Sweet chestnut blight (Cryphonectria parasitica) and Plane wilt (Ceratocystis platani (J.M.Walter) Engelbr. & T.C. Harr, formerly known as Ceratocystis fimbriata f. spp. platani Walter), requiring that plants and plant produce that are hosts of these pests must reach higher plant health standards before entering these zones. This is in line with UK policy objectives. Additional control measures to prevent the introduction and spread of Sweet Chestnut Blight and Plane wilt were introduced in relation to Scotland by the Plant Health (Scotland) (Amendment) (No.3) Order 2013 whilst strengthened EU measures, in the form of protected zone requirements, were being pursued for the UK, in relation to these plant pests. The new EU protected zone requirements for Sweet chestnut blight and Plane wilt and Oak processionary moth replace the existing national measures against these pests. A Transposition note is attached.

- The following EU Commission Implementing Decisions –

    - Commission Implementing Decision 2014/422/EU setting out measures in respect of certain citrus fruits originating in South Africa to prevent the introduction into and spread within the Union of Phyllosticta citricarpa (McAlpine) Van der Aa

    - Commission Implementing Decision 2014/497/EU as regards measures to prevent the introduction into and the spread within the Union of Xylella fastidiosa (Well and Raju)

    - Commission Implementing Decision 2014/679/EU amending previous Commission Implementing Decision 2012/70/EU as regards its period of application and as regards the movement to packing facilities of potato tubers in areas demarcated in order to prevent the spread within the Union of Epitrix cucumeris (Harris), Epitrix similaris (Gentner), Epitrix subcrinita (Lec.) and Epitrix tuberis (Gentner) (potato flea beetle).

    - Commission Implementing Decision 2014/690/EU repealing Decision 2006/464/EC on provision emergency measures to prevent the introduction into and spread within the Community of Dryocosmus kuriphilus Yasumatsu (Chestnut Gall Wasp)

- In addition, it includes a new provision in article 22 of the PH Order in relation to Commission Implementing Decision 2014/497 and Commission Implementing Decision 201/679 to exempt the movement of relevant material within a demarcated zone from the requirement to be accompanied by a plant passport. For consistency this provision also relates to article 5 of Commission Implementing Decision 2012/697.

Legislative context and consultation

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 Plant Health 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 Plant Health Directive is implemented in Scotland by the Plant Health (Scotland) Order (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 Directive (and therefore the principal Order) are 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.

The changes are required because of the Commission Implementing Directives 2014/78/EU and 2014/83/EU which have modified the annexes of the Plant Health Directive as a result of technical changes in the assessment of risks presented by particular pests and diseases and which introduce new measures to address risks presented by other pests and diseases. These amendments are to be transposed through this instrument, which comes into force on 26 February 2015.

Equivalent legislative changes have been introduced by Defra under The Plant Health (England) (Amendment) (No.2) Order 2014; The Forestry Commission under The Plant Health (Forestry)(England and Scotland)(Amendment)2014. Northern Ireland is also in the process of implementing these changes.

Consolidation

A commitment was made to amend national plant health legislation as and when required, to take account of new or revised risk assessment, pest interceptions, changes in distribution of pest and other developments, until the EU Review of the Plant Health Regime has been concluded. As this is still under review as part of a package of revised regulations on the agri-food chain, there are no immediate plans to consolidate the PH Order.

Consultation

This legislation implements EU legislation. The views of stakeholders were sought and taken into account during negotiations with the Commission and other Member States.

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. The requirements apply mainly in countries exporting to the EU.

SSI 2015/11

Title of Instrument:	Tweed Regulation Amendment Order 2015 (SSI 2015/11)
Type of Instrument:	Negative
Laid Date:	20 January 2015
Circulated to Members:	13 February 2015
Meeting Date:	18 February 2015
Minister to attend the meeting:	No
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee:	Yes
Reporting Deadline:	9 March 2015

Delegated Powers and Law Reform Committee

6. At its meeting on 27 January 2015, the Committee agreed to draw the attention of Parliament to the instrument and to report that it found the breach of s28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 acceptable with regard to the instrument. The extract from the report can be found in **Annexe A**.

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

Purpose

This Order amends the Tweed Regulation Order 2007 ("the 2007 Order"). It makes amendments to the annual close time (article 2(a)) and adjusts the periods within the annual close time when it is permitted to fish for and take salmon by rod and line in the Tweed District (article 2(b)). It also prohibits the retention of salmon caught by rod and line during the period from 1st February to 31st March with the effect that any salmon caught by such means will require to be immediately released (article 2(c)).

EXPLANATORY NOTE

As per purpose above and including:

By virtue of article 37 of the Scotland Act 1998 (River Tweed) Order 2006 ("the 2006 Order") fishing for, or taking, salmon during the annual close time is an offence and

any person found liable is subject, on summary conviction, to a fine not exceeding level 4 on the standard scale. Failure to comply with the prohibition in new article 3(3) of the 2007 Order is also an offence by virtue of article 54(7) of the 2006 Order. Any person found guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

POLICY NOTE

Purpose of the instrument

The Tweed Regulation Amendment Order 2015 ("the 2015 Order") contains provision for the conservation of salmon within the Tweed District. The 2015 Order extends the annual close time, and the permitted period for rod and line fishing within the district, to 31 March but requires the release of all salmon within that extended period. The general effect of the Order is to ensure that no salmon is taken during the early part of the season.

Legislative context

Freshwater fisheries management and conservation in Scotland is largely regulated by the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 ("the 2003 Act"). Although fisheries management is generally devolved separate arrangements prevail in respect of the border rivers. Fisheries management in the Tweed District is regulated by The Scotland Act 1998 (River Tweed) Order 2006 ("the 2006 Order") which broadly mirrors the provisions of the 2003 Act. It consolidates the legislation which applies in the Tweed District and establishes the River Tweed Commission which is charged with the management of the Tweed and its fisheries.

The Conservation of Salmon (Annual Close Time and Catch and Release) (Scotland) Regulations 2014 (SSI 2014 /327) extend the annual close time to 31 March (and to 30th April for the Esk Salmon Fishery District) in those salmon fishery districts which are regulated under the 2003 Act (with the exception of the Eachaig District)[1]. Those Regulations also require the release of all salmon during the extended close time. Parallel provision is required to extend this national conservation measure to cover the Tweed District. Article 36 of the 2006 Order enables the Scottish Ministers to set the annual close time for Tweed District. Article 54 of the 2006 Order provides that the Scottish Ministers may make an order where they consider it necessary or expedient to do so for the conservation of salmon.

In 2012 The River Tweed Commission applied for an annual close time and conservation order in terms of articles 36 and 54 of the 2006 Order. The proposal contained in the application was an extension of the annual close time to 30 April and a requirement to release all salmon within the extended close time. In accordance with paragraph 8 of Schedule 2 to the 2006 Order, Ministers consulted with such persons as they considered appropriate and requested additional information from the Commission. Regular discussions took place with the

[1] The annual close time for the Eachaig Salmon Fishery District is not extended as the annual close time already runs from 1st September to 30th April for that district.

Commission about the proposals in the context of the national proposals as well as wider developments around carcass tagging.

As part of their wider consideration of potential statutory conservation measures, Ministers have re-examined the information supporting the original application together with the additional information provided by the Commission. In addition, Ministers also took into account all of the information provided in the course of the further discussions with the Commission as well as the Scotland-wide report on the status of salmon stocks and determined to alter the proposal (as outlined in paragraph 1 above) in accordance with paragraph 10 of Schedule 2 of the 2006 Order to reflect the annual close time for the rest of Scotland (excluding the Esk). In accordance with paragraphs 8 and 9 of Schedule 2 to the 2006 Order, Ministers consulted with such persons as they considered appropriate and gave notice of the general effect of the proposal by way of an advertisement in 3 national newspapers. Ministers considered 45 representations and objections in relation to the Scotland-wide proposal (including 2 responses specific to the Tweed) and determined to make the Order. A further advert specifying the proposals for the Tweed District only was then placed in 3 local newspapers on Thursday 18 and 25 December 2014 to which no further representations or objections were received.

Policy background

Spring salmon stocks within the Tweed District have stabilised in recent years albeit at a low level. As a consequence the Commission advocate a voluntary conservation code which encourages anglers to release any salmon caught until 30 June and asks netsmen to delay the start of their season until 1 July (with the offer of fair compensation). While the existing voluntary measures on the Tweed are welcomed it remains the case that the current status of stocks in Scotland requires protection to preserve existing levels of early running spring salmon, where these are stable (as is the case within the Tweed District), and to seek to achieve an increase in stock levels in areas where they are in decline. Spring stocks are of particular concern as this is the time when the salmon are at their most vulnerable.

In acknowledging its international obligations, the Scottish Government has been considering what action it could take in response to the various data that is collected regarding adult salmon abundance and most particularly the recent report from Marine Scotland which provided an overview of the current status of Scottish Stocks. www.scotland.gov.uk/Resource/0044/00446406.pdf

It is clear from the latest analysis that across Scotland, while reported rod catches in the summer and autumn have increased over the period 1952-2013, catches in the spring have generally declined, stabilising at a low level in recent decades. Within this trend there is some acknowledged regional variation, with some areas showing an increase in spring rod catches, some a decline and most showing no trend. However, catches in all areas are currently low when compared to levels throughout the period 1952-2013.

As a consequence it is considered that statutory measures are required following the end of the voluntary agreement in order to protect the current stock status and, should there be any further decline, to have that appropriately assessed and attributed. This does not negate the ability to agree further voluntary measures that

go beyond the statutory minimum. That very much remains within the gift of others and will be encouraged

The policy intent is that the conservation measures apply throughout the Tweed District as well as the rest of Scotland as the scientific evidence demonstrates that stock levels are in decline across the country.

Consultation

In accordance with paragraph 8 (as read with paragraph 7) of Schedule 2 of the 2006 Order, Scottish Ministers discussed the conservation measure at length with colleagues within Marine Scotland and Marine Scotland Science and the Tweed Commission. Under the requirements of Schedule 2, paragraph 9 of the 2006 Order, notice of the general effect of the proposal was provided in 3 national newspapers (Scottish Ministers consulted on a national conservation measure Scotland wide). This was supplemented by a target email to a number of national representative bodies. However, while the provisions envisaged for the Tweed replicated that for the national measure, notice of the general effect of the proposals for the Tweed District was then undertaken separately.

An advert for the Tweed proposals was placed in three local newspapers on Thursday 18 and 25 December 2014. Anyone wishing to make any representations or objections with respect to the proposal was required to submit them in writing by Thursday 15 January 2015. No representations or objections were received following the local advertisement. However, a total of 45 responses were received from a range of interests including anglers, proprietors, representative bodies and conservation groups in relation to the national provision advertised on Thursday 9 and 16 October 2014. The responses to the Scotland-wide measures demonstrated that the majority were supportive of the proposal. However there was also a clear view that the proposal should have gone further although that observation offered no commentary on its wider socio/economic impact. We are aware that many anglers within the Tweed District practise catch and release well beyond 31 March in line with the local conservation policy. The operation of the 2015 Order will be reviewed on an annual basis taking into consideration Marine Scotland's annual stock assessment which is published alongside its national catch returns including the data for the Tweed District. The Order will underpin the current more extensive voluntary arrangements within the Tweed District.

Of the 45 responses received in respect of the national proposals the River Tweed Commission welcomed the proposals and highlighted that, whilst they were supportive they felt that the measure did not go far enough. The proposal was opposed by one netsman operating in the district, primarily on the basis that they considered the measures to be unjust and placed further restrictions on their business.

After due consideration of the representations and objections Ministers concluded that these did not outweigh the overwhelming case for statutory conservation measures, which was supported by the majority of consultees, and on balance the

scientific data supports the assertion that this measure remains proportionate and necessary/expedient.

Impact and financial effects

We have engaged with the River Tweed Commission and representative bodies during the consideration of the application and specifically sought information on the potential financial impact of the proposed conservation measures during the statutory consultation. Those affected by the proposal range from small individual netting companies to larger sporting estates. Whilst one netsmen within the Tweed District, together with the other netsmen operating in other districts, highlighted that there would potentially be a financial loss to their business they were unable to quantify the extent or provide any financial information.

A single Business Regulatory Impact Assessment for the national conservation measure was completed and is available at: www.legislation.gov.uk/ssi/2014/327/contents/made.

Annexe A

EXTRACT FROM THE DELEGATED POWERS AND LAW REFORM COMMITTEE'S 1ST REPORT OF 2015

Tweed Regulation Amendment Order 2015 (SSI 2015/11) (Rural Affairs, Climate Change and Environment Committee)

The purpose of the instrument is to extend the annual close time for salmon fishing in the River Tweed to 31 March and to make provision in relation to the retention of salmon caught by rod and line during the period from 1 February to 31 March. It is an offence to fish for salmon during the annual close time, subject to specified exceptions for rod and line fishing.

The Order comes into force on 31 January.

The Scottish Government has provided a letter to the Presiding Officer, to explain the failure to comply with the "28 day rule", as set out in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 ("ILRA"). The correspondence is reproduced at Annex B.

The Scottish Government explains in its letter that the breach of the 28 day rule is in this case attributable to an initial failure to comply with the pre-laying consultation requirements in paragraph 9 of Schedule 2 to the Scotland Act 1998 (River Tweed) Order 2006, which contains the enabling powers under which the Order is made. This error meant that there was a need to re-circulate notice of the proposals contained in the Order in three newspapers circulating in the Tweed district.

This further consultation impacted the timetable for laying the instrument before the Parliament, with effect that it was laid on 20 January and will come into force on 31

January. There are accordingly 11 days for the Parliament to scrutinise the Order and for the public to take notice of the Order before it comes into force. The Committee considers the breach of the 28 day rule in these circumstances to be unsatisfactory given the significance of the Order, which creates a new criminal offence in respect of retention of salmon caught by rod and line during specified periods within the annual close time, and extends the annual close time to 31 March.

The Committee draws this instrument to the attention of the Parliament under reporting ground (j). The instrument fails to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 ("ILRA"). The instrument was laid before the Parliament on 20 January 2015 and will come into force on 31 January 2015. The instrument does not respect the requirement that at least 28 days should elapse between the laying of an instrument which is subject to the negative procedure and the coming into force of that instrument.

28. **The Committee finds the failure to comply with section 28 to be unsatisfactory in the circumstances of this instrument, as the instrument creates one new criminal offence and modifies the application of another.**

NO POINTS RAISED

Annexe B

Breach of laying requirements: Letter to Presiding Officer

The Tweed Regulation Amendment Order 2015, SSI 2015/11, was made by the Scottish Ministers under articles 36 and 54 of the Scotland Act 1998 (River Tweed) Order 2006 ("the 2006 Order") on 19 January 2015. It is being laid before the Scottish Parliament today, 20 January 2015 and comes into force on 31st January 2015.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) has not been complied with. To meet the requirements of section 31(3) that Act, this letter explains why.

The Order prescribes the annual close time for the Tweed District and adjusts the periods within the annual close time when it is permitted to fish for, or take, salmon by rod and line as well as prohibiting the retention of salmon during that extended prescribed period in the spring. These measures follow an application by the Tweed Commissioners. The Order also follows the Conservation of Salmon (Annual Close Time and Catch and Release) (Scotland) Regulations 2014 (SSI 2014/327) which came into force on 9th January and make parallel provision adjusting the close times, the permitted periods for rod and line fishing and introducing a catch and release scheme during the spring season.

Schedule 2, paragraph 9 of the 2006 Order requires that, before making the Order, the Scottish Ministers must direct that notice of the general effect of the proposals shall be given by advertising in a newspaper circulating in the district. Regrettably this specific legislative requirement in relation to the Tweed would not have been clear to the reader when the measures were first advertised in three national

newspapers on 9 October 2014, and as a consequence the proposals were advertised on 19 December 2014 in three newspapers circulating in the Tweed District to ensure that there was no potential confusion about the geographical extent of the measures.

Schedule 2, paragraph 9 of the 2006 Order requires that a period of 28 days is allowed from the publication of the proposals for representations or objections to be made. That period finished on 15 January 2015. While there were no responses to that process, two were received as part of the original consultation in November. I can confirm that we have been in regular contact with the River Tweed Commission about these measures and the progress of this instrument.

As the Order requires to come into effect on 31st January 2015 in time for the start of the fishing season in the Tweed District, section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with. I apologise for this matter which is due entirely to our wish to ensure that the requirements of the consultation process have been fully complied with.

The Scottish Government's Wild Fisheries Review

Background

1. During scrutiny of the Scottish Government's Aquaculture and Fisheries (Scotland) Bill[1] in 2012/13, the Scottish Government announced its intention to establish a formal review of wild fisheries in Scotland. In its Stage 1 Report[2] on the Bill, the Rural Affairs, Climate Change and Environment (RACCE) Committee made a number of recommendations about issues which such a wild fisheries review should include, and also stated the Committee's intention to take an interest in the review and its outcomes.

2. In its Stage 1 report, the Committee recommended that the following issues should be included in the wild fisheries review—

- the management and governance of District Salmon Fishery Boards (DSFBs), including: support needed for smaller boards to comply with legal requirements; how boards are funded; and how DSFBs interact with other fishery interests;
- issues relating to coarse fisheries;
- issues relating to salmon netting; and
- how initiatives such as the Upper Dee Riparian Scheme can be rolled out across the country.

3. On 14 January 2014, the then Minister for Environment and Climate Change wrote[3] to the Committee to inform it of the launch of the Wild Fisheries Review, and the appointment of Andrew Thin (who took up his appointment in March 2014), the outgoing Chair of Scottish Natural Heritage, as the Chair of the review.

4. The then Minister wrote[4] again to the Committee on 27 February 2014 with information on the remit, scope and structure of the review, confirming that it would formally begin on 3 March 2014 and take around six months to conclude its work with a report to the Minister. The Minister stated that he would then "consider any recommendations made and will consult on any subsequent proposals to implement a new management regime."

5. The Scottish Government stated that the aims of the review were to—

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[1] Aquaculture and Fisheries (Scotland) Bill. Available at http://www.scottish.parliament.uk/parliamentarybusiness/Bills/55381.aspx.

[2] Scottish Parliament Rural Affairs, Climate Change and Environment Committee. Stage 1 report on the Aquaculture and Fisheries (Scotland) Bill. Available at: http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/Reports/rur-13-01w.pdf.

[3] Letter from the Minister for Environment and Climate Change, 14 January 2014. Available at: http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2014.01.14_-_Minister_Wild_Fisheries_Review.pdf.

[4] Letter from the Minister for Environment and Climate Change, 27 February 2014. Available at: http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2014.02.17_-_Minister_Wild_Fisheries_Review.pdf.

- develop and promote a modern, evidence-based management system for wild fisheries fit for purpose in the 21st century and capable of responding to the changing environment; and

- manage, conserve and develop our wild fisheries to maximise the sustainable benefit of Scotland's wild fish resources to the country as a whole and particularly to rural areas.

6. A more detailed remit and scope of the Review were published on the Scottish Government's website, along with some background to the review, and these have been reproduced in **Annexe A** to this paper.

7. The Chair was supported in the review by a review panel (comprising of Michelle Francis and Jane Hope) and a Technical Advisory Group, made up of representatives from Marine Scotland Science, Scottish Natural Heritage, the Scottish Environment Protection Agency and the Institute of Fisheries Management.

8. A formal call for written evidence[5] was issued on 28 April 2014. The call for evidence identified four main themes/questions for the review to consider—

- Leadership and governance;
- Management and delivery
- Resourcing; and
- Cross-cutting issues.

9. The Group published its final report and recommendations[6] to the Scottish Government on 8 October 2014. The recommendations contained in the report have been reproduced at **Annexe B.**

History of previous fisheries reviews

10. The report of the Salmon Strategy Task Force, published in 1997, recommended the replacement of DSFBs with 20 Area Fishery Boards. These would principally be responsible for salmon and sea trout fisheries, although the report said that giving these bodies responsibility for other species should be considered. The Task Force report reviewed previous work on this area. Proposals to replace DSFBs with larger area committees responsible for all species of fish date back to the Hunter Committee of 1965.

11. A Scottish Executive consultation 'Protecting and promoting Scotland's freshwater fish and fisheries' launched in 2000 (Scottish Executive 2000) set out the issues surrounding freshwater fishing, and sought views on how they could be resolved. The then Scottish Executive published a Green Paper (Scottish Executive 2001) which listed 26 mostly non-legislative actions to resolve these problems. The Green Paper did envisage some legislative actions, including a review of the legislation, once it had been consolidated. It did not propose the wholesale replacement of DSFBs but did propose the establishment of Area Fisheries

[5] Wild Fisheries Review. Call for evidence. Available at: http://www.scotland.gov.uk/Resource/0044/00449300.pdf.
[6] http://www.scotland.gov.uk/Topics/marine/Salmon-Trout-Coarse/fishreview/WFRFinal.

Management Committees at catchment level who would produce Area Fishery Management Plans. Where there was agreement DSFBs could combine and take on the role of these Committees.

12. The legislation was consolidated in the first session of the Parliament with the passing of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003[7], which brought all the main domestic laws relating to salmon and freshwater fisheries into one place.

13. The then Scottish Executive established a Fisheries Forum in 2004 to allow exchange of information and discussion of topical issues and to aid the consultation process and decision making for any new legislation. The forum also had a steering group, made up of representatives of all the main angling and fisheries management bodies plus other public and private sectors bodies with aquatic/environmental interests. Proposals for a Draft Aquaculture and Freshwater Fisheries Bill were put forward by the Scottish Executive in 2005 and were based on the work of the forum. The consultation document said the structure favoured by the forum was a "unitary authority" model covering salmon, trout and coarse fish. However it went on to say that developing legislative proposals would take longer than the timescale available for the Bill. Thus the Aquaculture and Fisheries (Scotland) Act 2007[8] did not make changes to the system for managing and administering salmon and freshwater fisheries in Scotland.

14. The Freshwater Fisheries Forum Steering Group began work on a strategy for freshwater fisheries in Scotland in July 2006, and the output of its work, a Strategic Framework for Scottish Freshwater Fisheries was published in July 2008. The Strategic Framework did not envisage fundamental changes to fisheries management structures. The Framework noted—

> "Existing DSFBs do not have a mandate to consider all-species fish and fisheries management, although Trusts and Foundations do. In some parts of the country, where the Boards and Trusts agree to work together, all-species management is either being practised, or starting to emerge on a pilot scale. We believe this activity should be supported and extended, since it provides valuable guidelines for the future, and at the same time allows an evolutionary approach to what already exists in Scotland. The Tweed Commission does have statutory responsibility for salmon and freshwater fish species."

15. In terms of fisheries management structures, actions proposed in the framework included: continuing with a strategic review of the need for further amalgamation of DSFBs; continued collaboration between DSFBs and fisheries trusts; and the formation of DSFBs and trusts where none exist. Other proposals in

[7] Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003. Available at: http://www.legislation.gov.uk/asp/2003/15/contents.
[8] Aquaculture and Fisheries (Scotland) Act 2007. Available at: http://www.legislation.gov.uk/asp/2007/12/contents.

the Framework formed the basis for the proposals on fisheries in the Aquaculture and Fisheries (Scotland) Act 2013.[9]

Scottish Government consultation on a licensing system for killing wild salmon in Scotland.

16. The Wild Fisheries Review report recommended that, in advance of consideration of the broader reform agenda for wild fisheries, Scottish Ministers take immediate action to conserve wild Atlantic Salmon (salmo salar) by introducing as soon as practicable a ban on killing except under licence, accompanying regulations on fishing equipment and the use of carcass tagging as a tool to ensure compliance with the licensing regime.

17. The Scottish Government launched a consultation[10] on 6 February 2015 running until 30 April 2015 inviting views on proposed conservation measures which would seek to ban the killing of wild salmon except under licence along with an accompanying carcass tagging scheme to ensure compliance.

RACCE Committee scrutiny

18. The Committee took evidence from the Chair of the review, Andrew Thin, and panel member Jane Hope, at its meeting on 21 May 2014.

19. The Committee subsequently agreed to wait until the final report was published and then take evidence from the review group; stakeholders; and the Minister. The Committee will therefore hear from the review group on 18 February, 2015; from stakeholders on 25 February 2015; and, finally, from the Minister on 4 March 2015. The Committee will then write to the Scottish Government with its views.

20. Written evidence received by the Committee in advance of the meeting on 18 February can be found at **Annexe C to this paper.**

Clerks/SPICe
Rural Affairs, Climate Change and Environment Committee

Annexe A

Background, remit and scope of the Wild Fisheries Review

Why do the Review?

Over the last 60 years there have been many reviews that have highlighted important issues that need to be addressed in the management of Scotland's wild fisheries (salmon and freshwater fisheries). However, limited real change has been delivered and, as confirmed in an independent recent baseline report for the Scottish

[9] Aquaculture and Fisheries (Scotland) Act 2013. Available at: http://www.legislation.gov.uk/asp/2013/7/contents.
[10] Scottish Government *Consultation on proposed conservation measures to introduce a licensing system for wild salmon in Scotland* 6 February 2015. Available at: http://www.scotland.gov.uk/Publications/2015/02/4158

Government, the existing wild fisheries management system is not fit for purpose in the 21st century.

Scottish Ministers have made a commitment to support and protect our famous and valuable salmon and freshwater fisheries and to modernise the management structures. The Aquaculture and Fisheries (Scotland) Act 2013 was the first stage in delivering this commitment and it implements work that had already been prepared to update the legislative framework for salmon fisheries, and modernised governance arrangements. Ministers have committed to an independent review of the management of all of Scotland's wild fisheries as the next stage in delivery of the manifesto commitment and to support further development of the sector.

The review will look forward, not backward. It will focus on the requirements of a modern, evidence-based fishery management system. It will not reassess how well the current system operates or how it might be amended – this is territory well covered by previous reviews. The review is expected to take into account appropriate reports and international experiences (notably Ireland, New Zealand and Canada). The review will seek to engage widely with relevant stakeholders, and the Scottish Government encourage people to engage with the review positively and in a co-operative spirit.

Remit

- To consider from first principles the challenges and opportunities facing Scotland's wild fisheries (salmon and freshwater), the management system and funding required to meet those challenges and deliver those opportunities.

- To consider the balance of responsibility and accountability as regards the international commitments, obligations and domestic policy objectives associated with wild fisheries and their environment.

- To set out how Scotland's natural fish and fisheries resources should be sustainably managed, conserved and developed in the context of Scotland's international commitments, obligations and domestic policy objectives in the best national interest and in a way that is underpinned by evidence.

- To identify and map the essential components of a modern wild fisheries management system; one responsive to the changing and multi-factoral impacts and pressures on fish and fisheries.

- To consider the information required to make and implement evidence-based management decisions.

- To consider the skill set required to deliver any new management system.

Scope

Specifically, the review and subsequent report will consider how:

- A strategic and joined up approach can be created in order to preserve, protect and develop Scotland's fisheries in a sustainable manner in the best interest of Scotland as a whole.

- Relevant data and research should be collected and shared to inform management decisions and who should have the lead responsibility for data collection, storage and research commissioning.

- All fisheries species focus and management can be achieved optimally.

- Fisheries management should be funded in a way that is both transparent and accountable.

- To manage non-compliance with wild fisheries legislation in a proportionate and consistent manner.

- The sustainable management of salmon netting activity could be taken forward in the future.

- Some countries supporting a similar range of species to Scotland manage their wild fisheries and what lessons can Scotland learn from international perspectives.

- Evidenced based management decisions should be implemented to ensure compliance with national and international obligations and legislative accountability.

- Appropriate skill sets required for fisheries management are developed and provide opportunities for continuous professional development.

- To create a better environment and increase the opportunity for all but especially young people to stimulate their interest in fishing and fisheries management.

- Appropriate interventions and actions, including broader policy, can overcome barriers, weaknesses or omissions in fostering productive working relationships between and across sectors.

- The review may further develop any objectives to enable its aims to be delivered and to advise Scottish Ministers on any aspects related to management of wild fisheries that merits their attention.

Annexe B

Report of the Wild Fisheries Review Panel – Summary List of Recommendations

Chapter 3 Fundamentals

Recommendation 1 – The new wild fisheries management system should be firmly based on a decentralised and locally empowered model.

Recommendation 2 – A small National Wild Fisheries Unit should be created within government in order to provide the new system with clear strategic direction, effective regulation and consistent national coordination.

Recommendation 3 – The Scottish Government should facilitate the establishment and maintenance of a network of locally empowered Fisheries Management Organisations (FMOs) operating to an agreed local management plan under the leadership of the National Wild Fisheries Unit.

Recommendation 4 – The new system should be based on an all species approach that seeks to spread expenditure so as to optimise the public value outcomes derived from all wild fisheries and minimise the risk inherent in a one species approach.

Recommendation 5 – Effective and highly transparent reporting mechanisms based on clear strategic priorities should be built into the new system at all levels, with a particular emphasis on demonstrating evidence based management and delivery of public value outcomes in line with the Scottish Government's Best Value Principles.

Recommendation 6 – The new system should seek to deliver a balanced range of outcomes across all three pillars of sustainability, with no one element predominating at the expense of others.

Recommendation 7 – The national unit will be democratically accountable through the normal mechanisms of government. Broad based mechanisms and standards of public accountability should also be applied to the local FMOs in respect of their performance of public duties and the spending of public money, and built into them at a constitutional level.

Chapter 4 National Leadership

Recommendation 8 – The core functions of the national unit should reflect its strategic and regulatory purpose, and should be built around–

- Advising Ministers on all matters relating to wild fisheries management.
- Determining national wild fisheries management strategy, including research and data strategy.
- Ensuring sufficient resourcing of FMOs to enable delivery of national management priorities.
- Securing effective delivery by FMOs of national management priorities.
- Facilitating effective delivery by FMOs of local management priorities.
- Reporting publicly on wild fisheries management outcomes against national priorities.
- Ensuring accountable regulation, including licensing, of wild fisheries management.

Recommendation 9 – The national unit should be located within the Scottish Government, and bring together existing policy and research functions within one integrated team. Expertise from across the public sector should be deployed to support the national unit on the basis of full inter-organisational cooperation, including through secondments and multi-agency collaboration.

Recommendation 10 – The national unit should be headed by a senior figure able to command respect among stakeholders, both within the wild fisheries sector and across wider cross-cutting policy areas. Excellent communications skills and experience of working through semi-autonomous delivery bodies will be particularly important. Consideration should be given to giving the post a specific title designed to help give the unit enhanced visibility and profile.

Recommendation 11 – The national unit should be required to produce and keep under review a National Wild Fisheries Strategy that is capable of providing an effective operational planning framework for local FMOs, and production of which involves widespread consultation with other key organisations operating in related policy areas.

Recommendation 12 – The national unit should be required to produce and keep up to date a National Wild Fisheries Research and Data Strategy as a framework for ensuring that the system is based on sound science, and that the resources available are deployed in a systematic, coordinated and optimally productive manner.

Recommendation 13 – The national unit should include within it an explicit responsibility for best practice coordination across the system, based on methodologies used in other areas of the public and private sectors that utilise equivalent decentralised delivery mechanisms to secure consistent public services.

Recommendation 14 – The national unit should be required to produce a publicly available annual performance report, summarising in accessible terms and against the strategic priorities set out in the national strategy the progress made against priority outcomes. This should include indicators relating to the management performance of both the National Unit and FMOs, the conservation status of fisheries stocks, and key cost and value for money indicators.

Chapter 5 Local Delivery

Recommendation 15 – The core functions of FMOs should reflect their purpose as the all species management delivery mechanism for the new system, and should be built around –

- Delivering national wild fisheries management priorities at a local level.
- Advising local authorities and the national unit on matters relating to wild fisheries management.
- Identifying and delivering local wild fisheries management priorities.
- Raising funds and other resources in addition to those provided through the national unit.

- Reporting publicly on the outcomes of local wild fisheries management.
- Building cross-sectoral partnerships and facilitating wider participation.

Recommendation 16 – FMOs should be constituted as Scottish charitable incorporated organisations or as charitable companies, adhering to a model constitution that is provided by the national unit and which incorporates appropriate membership and governance arrangements.

Recommendation 17 – The national unit should establish and keep under review a set of criteria defining Approved Body Status for FMOs. These should include the model constitution referred to in recommendation 16, and may include a range of other criteria that must be met by any organisation or grouping seeking to become a local FMO. The national unit should be required to ensure coverage of the whole of Scotland by a network of approved FMOs, which might include FMOs structured internally on a federated basis in some areas. This process should be conducted through negotiation and dialogue, but subject to the exercise of reserve powers (see below) if necessary.

Recommendation 18 – The national unit should establish a system of three year framework agreements wherein it agrees in principle a local Fisheries Management Plan for the area covered by each FMO, but subject to confirming annually a concise business plan and budget. Fisheries Management Plans should be subject to local consultation with relevant stakeholders prior to being agreed by the national unit. As a minimum they should set out clearly how the FMO plans to contribute to delivery of national priorities detailed in the National Wild Fisheries Strategy (including the Research and Data Strategy), and they should normally also describe local strategic priorities alongside plans for how these will be delivered and funded.

Recommendation 19 – FMOs should produce an annual report detailing inter alia performance against their Framework Agreement and annual business plan together with a full financial report and an assessment of the condition of local fisheries stocks. These annual reports should be submitted formally to the national unit, and made publicly available.

Recommendation 20 - Scottish Ministers should have reserve powers through the national unit to make alternative arrangements in order to ensure effective local delivery of national wild fisheries management priorities, where they are satisfied for the time being that no effective local FMO can be formed or relied upon. These powers should include inter alia the power to invite a neighbouring FMO to deliver services (such as research and data gathering) in the area in question, and/or to deliver those services directly through the national unit. Use of these powers should normally be seen as a measure of last resort until an effective local FMO can be (re)established.

Recommendation 21 – The current agreement between the Scottish and Westminster governments with regard to the Tweed and Border Esk Rivers should be maintained, with the Tweed being brought under the same FMO arrangements as recommended across the rest of Scotland.

Recommendation 22 – Consideration should be given to establishing a formal advisory committee to the national unit, perhaps comprising one representative from

each FMO, with a view to ensuring effective ongoing liaison and collective endeavour across the system.

Recommendation 23 – Consideration should be given, in consultation with the AFSB and RAFTS, to developing and implementing a formal transition programme for fisheries management at a local level that involves integrating existing DSFBs and FTs into shadow FMOs ahead of any legislative change arising from this review.

Chapter 6 Resourcing

Recommendation 24 – The current salmon assessment and levy system should be reviewed and reformed so as to eliminate reliance on self reporting of catches. It should be extended to include all fisheries of significant potential commercial value (i.e. to become a wild fisheries levy), and it should treat on a comparable basis all those who have the potential to derive commercial gains from their ownership of fishing rights (both rod and net fisheries).

Recommendation 25 - A standard levy rate, determined by Scottish Ministers through the national unit, should apply to all wild fisheries in Scotland regardless of location, and be set at a level approximately equivalent to that which might be expected if such fisheries were required to pay business rates. Utilisation of funds arising from the standard rate should be determined by the national unit in accordance with national strategic priorities, and deployed across Scotland in a fully transparent manner according to priority need (i.e. for the most part through the FMO in the area where they are raised, but with the flexibility to redeploy funds to other FMO areas where need may be greater).

Recommendation 26 – Local FMOs should have the right to propose to the national unit a locally enhanced levy for the purpose of funding local priorities in addition to those financed via the national unit through the standard rate. The FMO should be required to demonstrate that this is necessary for ensuring sustainable management of local fish populations, and affordable within the context of potential commercial incomes from the fisheries concerned. Scottish Ministers should then have the power to set a locally enhanced levy on the basis of this proposal if they considerate it appropriate to do so, with all the funds raised being made available to the FMO in question to be spent on local priorities.

Recommendation 27 – Collection of both the standard and locally enhanced fisheries levy should be centralised, through the national unit or another appropriate organisation, in order to minimise collection costs.

Recommendation 28 – Relevant stakeholder organisations, with support from the national unit, should be invited to develop detailed proposals for an Angling for All Programme for Scotland, of which an integral element would be a national rod licence scheme the income from which is dedicated to financing the programme.

Recommendation 29 – Ministers should be given the statutory power(s) required to introduce a national rod licence scheme, but should do so only if/when they are satisfied that the other elements of a well-supported national Angling for All Programme are in place.

Recommendation 30 – Powers should be introduced whereby a charge may be made by the appropriate licensing body, on at least a full cost recovery basis, for the issuing of licenses to kill wild salmon within the context of the recommendations contained in section 7.

Recommendation 31 – Local FMOs should be encouraged to source a significant proportion of their overall resource requirements with respect to local priorities from charitable and commercial sponsorship sources, and this should be built into business planning and reporting requirements. Integral to this should be an expectation that the skill set required of those leading FMOs should include reference to the leadership and governance of activities resourced through charitable funding.

Chapter 7 Sustainable Harvesting

Recommendation 32 – Consideration should be given to whether an offence of reckless or irresponsible exercise of private fishing rights might be introduced into statute, designed to require the owners of such rights to exercise them in a sustainable manner with respect to populations of all wild fish species in the area(s) where their rights apply. This might include consideration as to whether such an offence might trigger penalties through cross compliance mechanisms.

Recommendation 33 – Ministers should have the power to introduce a ban on the killing of particular species of wild fish, usually until further notice, at either a national or local level in the interest of conservation of stocks. Such a ban might include specifying particular methods and equipment that may still be used to fish for the species in question in a non-lethal (i.e. catch and release) manner, and might include the introduction of an associated licensed killing system to allow some harvesting of the species otherwise subject to such a ban. Under this power an immediate ban should be introduced in relation to salmon (see below) and in relation to a selected list of other species following consultation with relevant stakeholders. The sustainability of sea trout harvesting should also be kept under close review.

Recommendation 34 – As soon as is practicable Ministers should introduce a ban on the killing of wild salmon in Scotland except under license, and specify the types of equipment that may still be used to fish for salmon on a catch and release basis unless a killing license has been obtained. Ministers should also specify the dates when such licenses, which should be non-transferrable, may be exercised. Owners of salmon fishing rights who wish to kill salmon should be required to apply for a license to do so (specifying the number of fish sought) by the end of December in the year preceding the year in which the license is to be exercised. Applications should be considered and, if thought sustainable on scientific grounds, approved by a suitable public authority with the applicant having a right of appeal to a higher authority if the license is refused or a reduced number of fish consented. The basis of appeal should be that the applicant is able to demonstrate that the application would be sustainable within the context of all other applications lodged by the due date. Licenses approved should be issued only on payment of an appropriate fee designed to ensure full cost recovery, and managed through the issuing of numbered, year and location specific tags that must be attached immediately to any fish killed. This would mean that possession of a fish without such a tag would

become an offence, and any fish killed by accident could not be kept unless a tag is attached.

Recommendation 35 – Any consideration of an application to kill migrating salmon by a mixed stock fishery should take full account of current knowledge regarding the conservation status of fish populations in all destination rivers known to be involved, and where appropriate a precautionary approach should be adopted. If this results in licenses being issued for catches significantly below current levels, consideration should also be given to agreeing a stepped reduction over a reasonable period (perhaps three years) where there is evidence that this is necessary in order to enable the underlying business(es) to adapt to the new sustainable catch level.

Chapter 8 Sound Science

Recommendation 36 – The national unit should lead the development of a system of clear national standards for wild fisheries management (including data collection and storage) that will apply across all parts of the country and be subject to compliance checks by the national unit.

Recommendation 37 – Research and data gathering should be strategically driven, rigorously prioritised, and in the short to medium term should include the following –

- Criteria for determining salmon killing license applications (conservation limits).
- The feedback loop linking salmon licenses issued and resulting impacts on stocks.
- Salmon related data for reporting to NASCO and the EU.
- Habitat productivity, resilience and enhancement potential for all species.
- Impacts on sea trout and salmon survival in the Scottish marine environment.
- Basic mapping of Scotland's wider all species wild fisheries resource.
- The effectiveness of catch and release as a conservation tool (i.e. associated mortality).
- Potential threats to wild fisheries populations (disease, invasive species, climate change, etc).
- Market research to support work to increase the socio-economic contribution of wild fisheries.

Recommendation 38 – Working through the Institute of Fisheries Management and other suitable organisations, the national unit should ensure effective training and CPD availability for all decision makers in the system, including in relation to the following priorities –

- Research and data collection.

- Risk based decision making using relevant models.
- Habitat management and enhancement.
- Project and contract management.
- Leadership and governance.
- Marketing, partnership working, and community/stakeholder engagement.

Recommendation 39 – Effective appraisal systems (preferably 360 degree based) should be implemented for all key functions in the system, and be made a condition of approved body status for FMOs.

Recommendation 40 – A high level of priority should be accorded by all parties to ensuring that management methodologies, research, data collection and skills development are implemented in a manner that seeks to better integrate wild fisheries management within wider cross-cutting agendas, including through secondment of staff and multi-agency collaborations.

Recommendation 41 – The national unit and FMOs should promote the concept of citizen science as a key theme in developing a fisheries management system in Scotland that is founded at all levels on sound science. Standards and guidance issued by the National Unit should be presented in a manner that is accessible to a non-technical audience, and designed to encourage volunteer engagement in the scientific work of FMOs.

Chapter 9 Regulation and Compliance

Recommendation 42 – The system of closed days should be abolished, except with regard to the use of certain types of interceptor coastal and estuarine nets for salmon and sea trout where there is genuine scientific evidence to support the need for periodic closure. In such cases closed days/periods should be set by the national unit on the basis of sound science, and along with implementation of licensed controls on the number of salmon killed. The system should be designed in a flexible manner so as to be compatible with health and safety legislation governing the operation of nets in adverse weather conditions.

Recommendation 43 – The system of closed seasons should be reviewed and brought under the control of the national unit acting on the advice of local FMOs. It should be based on sound science with the aim of optimising sustainable socio-economic value to the district concerned. It should be extended to all species where scientific advice suggests that this should be the case, and in certain cases (for example salmon in the spring months) it should be integrated with a ban on killing but permitting catch and release during certain periods.

Recommendation 44 – The protection order system should be reviewed and reformed, with the right to approve protection orders being brought under the authority of Scottish Ministers through the national unit. In particular the review should consider –

- Making it possible for an application to be made by a simple majority of owners of fishing rights in the area being applied for, even if not all owners are agreed.

- Enabling the local FMO to apply for an order even if not supported by a majority of owners of fishing rights in the area being applied for.

- Ensuring that applications are assessed/approved only on the basis of reliable scientific evidence of unsustainable fishing pressures affecting one or more species in the area concerned.

- Ensuring that approvals incorporate robust conditions to ensure effective sustainable access for all to fishing in the area through an appropriately priced and widely available permit system.

- Enabling the operation of a protection order to be overseen on an ongoing basis by the local FMO, including handling of complaints relating to access, with an annual report to the national unit.

- Requiring a formal review process by the national unit every five years, with the potential to revise or remove the order as appropriate.

- Including the possibility that a protection order might cover lochs currently deemed "public waters" – Loch Lomond, Loch Ness, and Loch Oich – if necessary.

Recommendation 45 – The warranting of bailiffs should be brought under democratic control through the national unit, and subject to appropriate training, qualification, CPD and complaints procedure requirements. These should emphasise and ensure the all species public interest purpose of powers vested in individuals through this system (i.e. to facilitate sustainable fishing for all), but should enable individuals so warranted to be employed and managed as a bailiff (including on a voluntary basis) by any appropriate public, private or third sector employer.

Recommendation 46 – Solway specific fisheries legislation should be reviewed with the intention of repealing any elements that are no longer appropriate.

Recommendation 47 – All releases of fish into wild fisheries systems, whether hatched from local spawn sources or otherwise, should be subject to licensed consent from the national unit, with permitted grounds being primarily that exceptional circumstances relating to population sustainability justify such an intervention. A charge should be made for such licences on a full cost recovery basis.

Chapter 10 Opportunities for All

Recommendation 48 – Strong encouragement should be given by government to all the major membership organisations in the sector to come together, possibly under the auspices of an independent chair appointed for the purpose, in order to develop a new and well resourced Angling for All Programme for Scotland. Integral to this should be the introduction of a national rod licence to fund the initiative on a long term basis.

Recommendation 49 – Related to, but separate from, the above recommendation, government should give strong encouragement to all the main stakeholder organisations with a view to gaining agreement on a single formal lead body (either an existing one or an umbrella body created for that purpose) that is able to participate in development of a national wild fisheries strategy and work constructively on behalf of all parts of the sector with SportScotland, National Lottery bodies and other relevant national institutions.

Recommendation 50 – Within the context of a national Angling for All Programme, a high priority should be attached to providing easily accessible web based information sources about how, where and when it is possible to fish in Scotland.

Recommendation 51 – A new Angling for All Programme for Scotland should, from its inception, closely involve local authorities and other relevant public agencies in order to ensure a strong emphasis on young people and priority social policy outcomes.

Recommendation 52 – VisitScotland should be invited to participate in the establishment and ongoing management of an Angling for All Programme for Scotland, with a particular emphasis on exploring ways in which casual angling and low impact salmon netting activities might be integrated into the wider activity holiday product.

Recommendation 53 – In developing fisheries management plans for their areas, local FMOs should be encouraged to include specific reference to their intended contribution to employability priorities for young people (work experience, apprenticeships), and to provision of volunteering opportunities for all ages.

Annexe C

Written submission from Mark Pattinson

The Report considers changes to the existing management structure of Scottish Rivers, and the conservation of river salmon which in most rivers are subject to a rapid decline in numbers.

The existing solution is a one hundred per cent release of all salmon, alive or dead, before July 1st, with a voluntary effort thereafter to release 90%.

The Review together with the Aquaculture and Fisheries Act, 2013, is essential following the rapid drop in the number of salmon returning to the rivers. Salmon angling is a substantial financial contributor to the Scottish rural economy. However fishery biologists and management structures have not solved the rapid fall in salmon returning to Scottish rivers.

The Objective of the Review is to arrest the decline in value of rural Scotland's most valuable assets, the salmon rivers.

Advice from any Scottish or overseas river management, which has succeeded in increasing the number of salmon caught and kept, should be considered.

The most successful Salmon Rivers in this respect are the two small 8 mile long rivers, the Rangas in Iceland. The river beds, being covered with volcanic ash, have no spawning beds. Consequently there are no salmon returning from migration to the rivers. For the last 25 years approximately 400,000 smolts have been annually placed in the rivers. 90% of these fish have exited the rivers, with approximately 12,000 out of 24,000 returning salmon caught each year. The cost of each smolt, grown in hatcheries from Ranga salmon eggs, can be as much as 50 pence. It is accepted both in Iceland and Scotland that the economic contribution to tourism is £1000 per salmon caught on rod and line.

.The salmon in Scottish and other rivers, having spawned, only one in two hundred ova reaches smolt stage for exiting the rivers. The rest are either casualties to storms or predators. The Rivers Ranga in their short summer season of three months records a catch of 12,000 salmon.

The annual cost of stocking 400,000 smolts can amount to £200,000. Consequently the cost of each salmon would be £17. Scotland's commercial advantage over Iceland, is that there are many salmon farm hatcheries with spare capacity. The Revenue to Iceland at £1000 per salmon caught in the Rivers Ranga, is £12 million p.a.

The only river in Scotland to practise a substantial juvenile salmon stocking programme, is The West Coast Carron. The Carron's redds with ova allevin and fry were frequently washed out by storms, and the annual catch reduced to four salmon. The annual catch now is 250 to 400 salmon. A substantial fishing/holiday lodge has been built beside the river. Young, local residents ,visitors and others are introduced to angling, the most popular hobby in the U.K. Many other Scottish rivers could follow this initiative for the benefit of Scottish rural tourism.

Regrettably Scotland is rapidly losing anglers to Iceland, Norway and other countries with better fishing records.

The concern that some biologists have is that a hatchery reared smolt is a weaker performer, and may not survive the sea migration. There is insufficient evidence for this theory. When caught, the hatchery reared salmon plays, looks and tastes the same as those spawned and grown naturally in the river. The difference can only be ascertained by examining the fish scales. The advantage of hatchery bred smolts is that 80% of the juvenile salmon, from ova to smolt migrate to sea.. It has been calculated that only 1 ova out of 200 laid in the river survives storms and fresh water predators to the migratory smolt stage.

Through the willing co-operation of the many Scottish professional fish farm hatcheries, the cost of the stocking of salmon smolts will be more competitive than for Icelandic rivers.

Community Empowerment (Scotland) Bill – Stage 2 amendments relating to the crofting community right-to-buy

Introduction

1. The Community Empowerment (Scotland) Bill[1] (the Bill) was introduced in the Scottish Parliament on 11 June 2014. It seeks to make provision about national outcomes; to confer functions on certain persons in relation to services provided by, and assets of, certain public bodies; to amend Part 2 of the Land Reform (Scotland) Act 2003[2]; to enable certain bodies to buy abandoned or neglected land; to make provision for registers of common good property and about disposal and use of such property; to restate and amend the law on allotments; to enable local authorities to reduce or remit non-domestic rates; and for connected purposes.

2. The Local Government and Regeneration (LGR) Committee was designated as lead committee by the Parliamentary Bureau. The Rural Affairs, Climate Change and Environment (RACCE) Committee considered Part 4 of the Bill (the community right-to-buy land.) at stage 1 and reported to the Local Government and Regeneration Committee.[3] The stage 1 debate on the Bill took place on 3 February 2015.

3. The Rural Affairs, Climate Change and Environment Committee anticipates considering amendments to Part 4 of the Bill and amendments to issues relating to land reform (including crofting community right-to-buy), subject to Parliamentary agreement.

4. In its initial consideration of its approach to the Bill the Committee agreed to take evidence at stage 2 on amendments relating to the crofting community right-to-buy. The Scottish Government has now lodged amendments[4] with accompanying explanatory notes[5] on the crofting community right-to-buy. These are included as annexe A.

5. Written submissions have been received from Community Land Scotland, NFUS and HIE, and are attached as annexe B.

Clerks

Rural Affairs, Climate Change and Environment Committee.

[1] Community Empowerment (Scotland) Bill, as introduced (SP Bill 52, Session 4 (2014)) Available at: http://www.scottish.parliament.uk/parliamentarybusiness/Bills/77926.aspx.
[2] Land Reform (Scotland) Act 2003. Available at: http://www.legislation.gov.uk/asp/2003/2/contents.
[3] RACCE Committee Report on Part 4 of the Community Empowerment (Scotland) Bill: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/86067.aspx
[4] Scottish Government amendments to stage 2 of the Community Empowerment (Scotland) Bill: http://www.scottish.parliament.uk/S4_Bills/Community%20Empowerment%20(Scotland)%20Bill/Daily_List_10_February_2015.pdf
[5] Scottish Government explanatory note on stage 2 amendments to Community Empowerment (Scotland) Bill: http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/CESB_Scottish_Government_Explanatory_Notes_to_Stage_2_Amendments_-_Crofting_Right_to_Buy.pdf

Annexe A

Scottish Government Amendments and Explanatory Notes - Crofting Community Right-to-buy

AMENDMENTS

Community Empowerment (Scotland) Bill – Stage 2

After section 47

Aileen McLeod

1 After section 47, insert—

<Modifications of Part 3 of the Land Reform (Scotland) Act 2003

Crofting community bodies

(1) Section 71 of the 2003 Act (crofting community bodies) is amended as follows.

(2) Before subsection (1), insert—

"(A1) A crofting community body is, subject to subsection (4)—

(a) a body falling within subsection (1), (1A) or (1B), or

(b) a body of such other description as may be prescribed which complies with prescribed requirements.".

(3) In subsection (1)—

(a) for the words "crofting community body is, subject to subsection (4) below," substitute "body falls within this subsection if it is",

(b) in paragraph (b), after "land" insert ", the interest mentioned in section 69A(3)",

(c) in paragraph (f), the words "and the auditing of its accounts" are repealed, and

(d) in paragraph (h)—

(i) after "land" insert ", interest in land", and

(ii) in sub-paragraph (i), for the words "or community body" substitute ", community body or Part 3A community body (as defined in section 97D)".

(4) After subsection (1), insert—

"(1A) A body falls within this subsection if it is a Scottish charitable incorporated organisation (a "SCIO") the constitution of which includes the following—

(a) a definition of the crofting community to which the SCIO relates,

(b) provision enabling the SCIO to exercise the right-to-buy land, the interest mentioned in section 69A(3) and sporting interests under this Part,

(c) provision that the SCIO must have not fewer than 20 members,

(d) provision that the majority of the members of the SCIO is to consist of members of the crofting community,

(e) provision under which the members of the SCIO who consist of members of the crofting community have control of the SCIO,

(f) provision ensuring proper arrangements for the financial management of the SCIO,

(g) provision that, on the request of any person for a copy of the minutes of a meeting of the SCIO, the SCIO must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,

(h) provision that, where a request of the type mentioned in paragraph (g) is made, the SCIO—

(i) may withhold information contained in the minutes, and

(ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and

(i) provision that any surplus funds or assets of the SCIO are to be applied for the benefit of the crofting community.

(1B) A body falls within this subsection if it is a community benefit society the registered rules of which include the following—

(a) a definition of the crofting community to which the society relates,

(b) provision enabling the society to exercise the right-to-buy land, the interest mentioned in section 69A(3) and sporting interests under this Part,

(c) provision that the society must have not fewer than 20 members,

(d) provision that the majority of the members of the society is to consist of members of the crofting community,

(e) provision under which the members of the society who consist of members of the crofting community have control of the society,

(f) provision ensuring proper arrangements for the financial management of the society,

(g) provision that, on the request of any person for a copy of the minutes of a meeting of the society, the society must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,

(h) provision that, where a request of the type mentioned in paragraph (g) is made, the society—

(i) may withhold information contained in the minutes, and

(ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and

(i) provision that any surplus funds or assets of the society are to be applied for the benefit of the crofting community.".

(5) In subsection (2), after "(1)(c)" insert ", (1A)(c) or (1B)(c)".

(6) After subsection (4), insert—

"(4A) Ministers may by regulations from time to time amend subsections (1), (1A) and (1B).

(4B) If provision is made under subsection (A1)(b), Ministers may by regulations make such amendment of section 72(1) in consequence of that provision as they consider necessary or expedient.".

(7) In subsection (5)—

(a) after "(1)(a)" insert ", (1A)(a) or (1B)(a)", and

(b) in paragraph (a)—

(i) in sub-paragraph (i), after "Act" insert "and who are entitled to vote in local government elections in the polling district or districts in which that township is situated",

(ii) the word "or" immediately following sub-paragraph (i) is repealed,

(iii) in sub-paragraph (ii), for the words from "being" to the end of the paragraph substitute—

"(ii) are tenants of crofts in the crofting township whose names are entered in the Crofting Register, or the Register of Crofts, as the tenants of such crofts;

(iii) are owner-occupier crofters of owner-occupied crofts in the crofting township whose names are entered in the Crofting Register as the owner-occupier crofters of such crofts; or

(iv) are such other persons, or are persons falling within a class of such other persons, as may be prescribed;".

(8) In subsection (6)—

(a) for "(5)(a)(i)" substitute "(5)(a)",

(b) after "above" insert "—", and

(c) at the end insert—

""owner-occupied croft" has the meaning given by section 19B(5) of the Crofters (Scotland) Act 1993,

"owner-occupier crofter" is to be construed in accordance with section 19B of that Act.".

(9) In subsection (8)—

(a) after "section" insert "—", and

(b) at the end insert—

""community benefit society" means a registered society (within the meaning of section 1 of the Co-operative and Community Benefit Societies Act 2014) registered as a community benefit society under section 2 of that Act,

"registered rules" has the meaning given by section 149 of that Act (as that meaning applies in relation to community benefit societies),

"Scottish charitable incorporated organisation" has the meaning given by section 49 of the Charities and Trustee Investment (Scotland) Act 2005.".>

Aileen McLeod

2 After section 47, insert—

<**Modification of memorandum or articles of association or constitution**

In section 72 of the 2003 Act (provisions supplementary to section 71)—

(a) in subsection (1), for "or articles of association" substitute ", articles of association, constitution or registered rules (as defined in section 71(8))", and

(b) after subsection (2) insert—

"(3) Subsection (2) does not apply if the crofting community body would no longer be entitled to buy the land because the land is not eligible croft land.

(4) Where the power conferred by subsection (2) is (or is to be) exercised in relation to land, Ministers may make an order relating to, or to matters connected with, the acquisition of the land.

(5) An order under subsection (4) may—

(a) apply, modify or exclude any enactment which relates to any matter as to which an order could be made under that subsection,

(b) make such modifications of enactments as appear to Ministers to be necessary or expedient in consequence of any provision of the order or otherwise in connection with the order.".>

Aileen McLeod

3 After section 47, insert—

<**Application: information about rights and interest in land**

(1) Section 73 of the 2003 Act (application by crofting community body for consent to buy croft land etc.) is amended as follows.

(2) In subsection (5)—

(a) after "form" insert ", shall specify the persons mentioned in subsection (5ZA)",

(b) in paragraph (b)—

(i) in sub-paragraph (i), after "application" insert "known to the crofting community body", and

(ii) the words from "(ii)" to the end of the paragraph are repealed, and

(c) paragraph (f) is repealed.

(3) After subsection (5) insert—

"(5ZA)The persons are—

(a) the owner of the land,

(b) any creditor in a standard security over the land or any part of it with a right to sell the land or any part of it,

(c) the tenant of any tenancy of land over which the tenant has an interest,

(d) the person entitled to any sporting interests,

in respect of which the right-to-buy is sought to be exercised.".

(4) In subsection (11), for paragraphs (a) and (b) substitute "in such manner as may be prescribed".>

Aileen McLeod

4 After section 47, insert—

<**Criteria for consent by Ministers**

In section 74 of the 2003 Act (criteria for consent by Ministers), in subsection (1)—

(a) the word "and" immediately following paragraph (m) is repealed, and

(b) after paragraph (n) insert—

"(o) that the owner of the land to which the application relates is accurately identified in the application,

(p) that any creditor in a standard security over the land to which the application relates or any part of it with a right to sell the land or any part of it is accurately identified in the application,

(q) in the case of an application made by virtue of section 69A(2), that the tenant whose interest is the subject of the application is accurately identified in the application, and

(r) that the person entitled to any sporting interests to which the application relates is accurately identified in the application.".>

Aileen McLeod

5 After section 47, insert—

<**Ballot: information and expenses**

(1) Section 75 of the 2003 Act (ballot to indicate approval for the purposes of section 74(1)(m)) is amended as follows.

(2) After subsection (4) insert—

"(4A) Ministers may require the crofting community body—

(a) to provide such information relating to the ballot as they think fit, and

(b) to provide such information relating to any consultation with those eligible to vote in the ballot undertaken during the period in which the ballot was carried out as Ministers think fit.

(4B) Subject to subsection (6), the expense of conducting a ballot under this section is to be met by the crofting community body.".

(3) After subsection (5) insert—

"(6) Ministers may by regulations make provision for or in connection with enabling a crofting community body, in such circumstances as may be specified in the regulations, to apply to them to seek reimbursement of the expense of conducting a ballot under this section.

(7) Regulations under subsection (6) may in particular make provision in relation to—

(a) the circumstances in which a crofting community body may make an application by virtue of that subsection,

(b) the method to be applied by Ministers in calculating the expense of conducting the ballot,

(c) the criteria to be applied by Ministers in deciding whether to make a reimbursement to the applicant,

(d) the procedure to be followed in connection with the making of—

(i) an application to Ministers,

(ii) an appeal against a decision made by Ministers in respect of an application,

(e) persons who may consider such an appeal,

(f) the powers of such persons.".>

Aileen McLeod

6 After section 47, insert—

<**Application by more than one crofting community body**

In section 76 of the 2003 Act (right-to-buy same croft land exercisable by only one crofting community body), for subsection (4)(b)(i) substitute—

"(i) each person invited, under section 73(8)(a), to send them views on the application,".>

Aileen McLeod

7 After section 47, insert—

<**Reference to Land Court of questions on applications**

In section 81 of the 2003 Act (reference to Land Court of questions on applications), in subsection (1)—

(a) after paragraph (b) insert—

"(ba) the owner of the land which is the subject of the application,

(bb) the person entitled to any sporting interests which are the subject of the application,", and

(b) in paragraph (ca), after "interest", where it first occurs, insert "—

(i) the tenant; and

(ii)".>

Aileen McLeod

8 After section 47, insert—

<**Valuation: views on representations and time limit**

In section 88 of the 2003 Act (assessment of value of croft land etc.)—

(a) after subsection (9), insert—

"(9A) Where written representations under subsection (9) are received—

(a) from the owner of the land, the tenant or the person entitled to the sporting interests, the valuer must invite the crofting community body which is exercising its right-to-buy the land, tenant's interest or sporting interests to send its views on the representations in writing,

(b) from the crofting community body which is exercising its right-to-buy the land, tenant's interest or sporting interests, the valuer must invite the owner of the land, the tenant or the person entitled to the sporting interests to send the views of the owner, tenant or (as the case may be) person on the representations in writing.

(9B) In carrying out a valuation under this section, the valuer must consider any views sent under subsection (9A).", and

(b) in subsection (13), for the word "6" substitute "8".>

Aileen McLeod

9 After section 47, insert—

<**Compensation**

In section 89 of the 2003 Act (compensation), for subsection (4) substitute—

"(4) Ministers may, by order, make provision for or in connection with specifying—

(a) amounts payable in respect of loss or expense incurred as mentioned in subsection (1),

(b) amounts payable in respect of loss or expense incurred by virtue of this Part by a person of such other description as may be specified,

(c) the person who is liable to pay those amounts,

(d) the procedure under which claims for compensation under this section are to be made.".>

Aileen McLeod

10 After section 47, insert—

<**Land Court: reasons for decision under section 92**

In section 92 of the 2003 Act (appeals to Land Court: valuation)—

(a) in subsection (5), for the words "within 4 weeks of the hearing of the appeal" substitute "—

(a) within 8 weeks of the hearing of the appeal, or

(b) where subsection (5A) applies, by such later date referred to in paragraph (b)(ii) of that subsection.",

(b) after subsection (5) insert—

"(5A) This section applies where—

(a) the Land Court considers that it is not reasonable to issue a written statement mentioned in subsection (5) by the time limit specified in paragraph (a) of that subsection, and

(b) before the expiry of that time limit, the Land Court has notified the parties to the appeal—

(i) that the Land Court is unable to issue a written statement by that time limit, and

(ii) of the date by which the Land Court will issue such a written statement.", and

(c) in subsection (6), for the words from "to" to the end of the subsection substitute "—

(a) to comply with the time limit specified in paragraph (a) of subsection (5) above, or

(b) to issue a written statement by the date referred to in paragraph (b) of that subsection.".>

Aileen McLeod

11 After section 47, insert—

<**Meaning of creditor in standard security with right to sell**

After section 97A of the 2003 Act insert—

"**97B Meaning of creditor in standard security with right to sell**

Any reference in this Part to a creditor in a standard security with a right to sell land is a reference to a creditor who has such a right under—

(a) section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970, or

(b) a warrant granted under section 24(1) of that Act.".>

EXPLANATORY NOTES

Introduction

These notes have been prepared by the Scottish Government in order to assist the reader of the amendments[6] and to help inform debate on them. They have not been endorsed by the Parliament. The notes should be read in conjunction with the amendments and the sections of the Land Reform (Scotland) Act 2003 which they propose to amend.

Policy aim of Part 4 amendments

The attached proposed amendments[7] amend the Crofting Community Right-to-buy provided for in Part 3 of the Land Reform (Scotland) Act 2003.

The proposed amendments are intended to provide greater flexibility for community bodies and streamline the crofting community right-to-buy process in line with feedback received from stakeholder groups.

Background

It is over 10 years since the introduction of the Crofting Community Right-to-buy provided for in the Land Reform (Scotland) Act in 2003 ("2003 Act").

During these 10 years, the Scottish Government have observed how the provisions have worked in practice and, with stakeholders' assistance, have identified ways in which they can be improved. A range of proposed amendments are summarised

[6] Amendments available here: http://www.scottish.parliament.uk/S4_Bills/Community%20Empowerment%20(Scotland)%20Bill/Daily_List_10_February_2015.pdf

[7] Amendments available here: http://www.scottish.parliament.uk/S4_Bills/Community%20Empowerment%20(Scotland)%20Bill/Daily_List_10_February_2015.pdf

below. The purpose of the proposed amendments is to make the Crofting Community Right-to-buy easier for crofting communities to use, while at the same time continuing to strike a fair balance between the rights of landowners and crofting communities.

A Call for Evidence, published on 13/10/2014, sought views from key stakeholders on these proposed amendments. This was followed by a number of face-to-face meetings with key stakeholders which took place in Edinburgh, Inverness, Isle of Harris and Kyle of Lochalsh during December 2014.

The Call for Evidence can be viewed at :

http://www.scotland.gov.uk/Topics/farmingrural/Rural/rural-land/right-to-buy/crofting/CallforEvidence

Responses to the Call for Evidence can be viewed at :

http://www.scotland.gov.uk/Topics/farmingrural/Rural/rural-land/right-to-buy/crofting/CallforEvidence/Responses

SPECIFIC AMENDMENTS – PART 4 OF COMMUNITY EMPOWERMENT BILL

Sections 71 and 72 - Legal structure of community body

The proposed amendments will broaden the range of legal organisations that can be a crofting community body (CCB). This is to include Scottish Charitable Incorporated Organisations (SCIOs) and Community Benefit Companies (BenComs) that meet certain requirements. Currently a CCB must be a company limited by guarantee that meets certain requirements.

This proposed amendment will provide greater flexibility for community bodies to adopt a legal entity which best suits their circumstances.

This proposed amendment will also bring Part 3 into alignment with proposed amendments to Part 2 (community right-to-buy) and Part 3A (the proposed new right-to-buy abandoned or neglected land without a willing seller) of the 2003 Act.

In addition, the proposed amendment will insert a section 71(A1)(b) which will give Ministers a regulation-making power to provide for different types of bodies to be eligible crofting community bodies.

Section 71 - Removal of provision for auditing of accounts

The proposed amendments remove the requirement that a company limited by guarantee can only be a CCB if its articles of association include provision for the auditing of accounts. Such a company will still be required to make proper arrangements for its financial management.

The reason for this proposed amendment is that it has been indicated by some community bodies that they believe they are required to have formal audits of accounts prepared in order to comply with the 2003 Act, which is not the case.

Section 71 - Amend definition of 'crofting community'

The proposed amendments would amend the definition of a 'crofting community' in section 71(5) to capture more crofters who are excluded by the existing legislation. It is recognised that the existing definition of a crofting community may cause difficulties in a number of ways and may not include all those who would consider themselves to be members of the crofting community.

The proposed amendment includes owner-occupier crofters who are registered on Registers of Scotland's Crofting Register within the definition of the crofting community, but does not include those on the Crofting Commission's Register of Crofts at this point in time. The proposed amendment gives Ministers a regulation-making power to expand the definition of crofting community at a later date. Such expansion could include owner-occupier crofters who are registered in the Register of Crofts.

Section 73 - Croft land mapping

The proposed amendments simplify the mapping information that a CCB is required to provide about the land that it wishes to purchase. The existing mapping requirements are recognised as being particularly complex as a CCB is required to map areas including all sewers, pipes, lines, watercourses etc. In addition to the map, the CCB is also required to provide a written account of all such features on the land, and their locations.

The proposed amendment will simplify mapping requirements to a more reasonable level than current requirements, because it has been evident during stakeholder consultation that the current requirements are considered to be particularly complex. The required information to be on the application form will still be set out in Ministerial regulations, but these regulations are no longer obliged to specify that all rights and interests in the subjects of the application are identified – instead they must specify that all rights and interests in the subjects of the application that are known to the community body are specified. In addition the requirement that the required information must include sewers, pipes, lines, watercourses or other conduits and fences, dykes, ditches or other boundaries in or on the land will be removed.

Section 73 - Public notice of application

The proposed amendments will amend the way in which Ministers are required to give public notice of an application. Current provisions require Scottish Ministers to publish a public notice advertising the crofting community body's right-to-buy application under Part 3 of the 2003 Act. The 2003 Act requires the advertisement to be placed in a newspaper circulating in the area where the land or interests the crofting community body wishes to acquire are located, and in the Edinburgh Gazette.

The intention is that Ministers should still be required to give public notice, by advertisement, of an application by a crofting community body under Part 3 of the Act. The proposed amendments provides that the form of the advertisement be set out in regulations made by Ministers.

This proposed amendment provides greater flexibility and allows more appropriate forms of advertisement to be used according to the individual circumstances of the case. It might be the case that advertising in the local church or village hall will reach a wider community audience than an advert placed in a newspaper circulating in the local area.

Sections 74(1) and 97B - Identification of owner, tenants and certain creditors

The proposed amendments add to the conditions set out in section 74(1) of the Act to provide that, in order to consent to an application under Part 3, Ministers must be satisfied that the owner, tenant, person entitled to sporting interests, or creditor in a standard security in relation to that land or interests, are correctly identified in the application submitted by the crofting community body.

This proposed amendment will ensure that all relevant parties to the application are correctly identified in order for the application to proceed. This will also ensure that all parties to the application are fully involved in the process and will be given the opportunity to comment on the application. This will ensure that Ministers will have received all available evidence on which to make a decision on the crofting community right-to-buy application.

Section 75 - Ballot procedure

(1) A ballot of the crofting community must be undertaken by the crofting community body in order to indicate where or not there is community support for the proposal to buy the land to be purchased under Part 3. Ministers already have power to make regulations setting out how the ballot is to be conducted.

The proposed amendments inserts a specific power for Ministers to make regulations setting out the information that the crofting community body is required to provide to Ministers about the ballot, or any consultation that the crofting community body may have held with the community about their application.

(2) The crofting community body are already responsible for paying for the cost of the ballot. The proposed amendment expressly states that the crofting community body is liable for meeting the expense of conducting the ballot.

(3) The proposed amendments also insert a power for Ministers to make regulations setting out circumstances in which the CCB may apply to Ministers to recover the cost of conducting the ballot.

The proposed amendments provide clarity and confirm that it is the crofting community body who is liable for the cost of the ballot, and that the CCB may, in certain circumstances, seek reimbursement of the cost of conducting the ballot.

The proposed amendments also give Ministers flexibility to request additional information in connection with the ballot, if Ministers feel that additional information would be helpful in the decision-making process.

Section 76 - Right-to-buy exercisable by only one crofting community body

When more than one CCB applies to purchase the same land, Ministers must decide which application is to proceed and the other applications are extinguished.

If an application is extinguished Ministers have to notify the owner of the land, person entitled to the sporting interests or tenant, as the case may be, and the CCB of this.

The proposed amendments provide that Ministers should also be required to notify each person who was invited to give views on the applications that have been extinguished.

This will ensure that all parties to the applications who were invited to comment on the applications are notified when an application is extinguished.

Section 81 - Reference to Land Court

Currently, the 2003 Act lists certain persons who have a right to refer a question to the Land Court at any time before Ministers reach a decision on an application.

The proposed amendment extends the list of certain persons who have a right to refer a question to the Land Court before Ministers reach a decision on an application.

The proposed amendment will ensure that all parties to an application have the right to refer a question to the Land Court.

Section 88 - Valuation

(1) In carrying out the valuation of land to be purchased by the CCB the valuer is required to invite the land owner, person entitled to the sporting interests in the land, or tenant as the case may be, and the CCB to make representations as to the value of the land.

Where such representations are made the proposed amendments provide that there should be an opportunity to make counter-representations.

(2) The proposed amendments provide that the timescale for valuation of the land to be purchased is increased from 6 weeks to 8 weeks (this can still be extended by Ministers) to provide the valuer with more time to complete the valuation and carry out the counter-representation step.

This will ensure that the valuer takes account of all parties' views to the application, is furnished with all information relevant to the valuation, and has adequate time to complete the valuation process.

Section 89 - Compensation

The proposed amendments extend the power for Ministers to make an order about the compensation payable by a CCB in relation to an application to purchase land. Compensation is payable to those who have incurred loss or expense in connection

with the crofting community right-to-buy application to recover the amount of that loss by way of compensation.

This will enable Ministers to make further provision, should it be considered appropriate, about the compensation payable.

The proposed amendment will enable Ministers to make further regulations, should they be required, to ensure those who have incurred loss or expense in connection with the crofting community right-to-buy application are properly compensated for the loss or expense.

Section 92 - Outcome of appeal to Land Court

Where there is an appeal to the Land Court in respect of the valuation, the Land Court is required to give their reasons in writing within 4 weeks of the hearing date. The proposed amendments change the 4 week time limit to 8 weeks.

In addition, the proposed amendments provide that, should the Land Court be unable to meet the 8 week time limit, the Land Court is to notify all parties of the date on which the Court will provide a written decision.

This proposed amendment eases the burden on the Land Court and gives the Land Court more flexibility when scheduling its caseload. In providing a date on which the Land Court will report should it be unable to report within 8 weeks, this will provide assurance to all parties of when the decision will be received.

Annexe B

Written submission from Community Land Scotland

The Crofting Community Right-to-buy - February 2014

Further Evidence to the RACCE Committee in response to Scottish Government proposals to amend Part 3 of the Land Reform (Scotland) Act 2003.

Introduction

Community Land Scotland, among others, was consulted by the Scottish Government in November on their then proposals to amend Part 3 of the Land Reform (Scotland) Act 2003. This submission of evidence is that sent to the Scottish Government at that time.

Generally speaking, and while recognising concerns raised by the RACCE Committee in their stage 1 Report about the process followed which give rise to consideration now about Part 3 of the Land reform Act, Community Land Scotland would want to re-assure the Committee that the Scottish Government consultation has been well received across the range of stakeholders and has provided ways forward which appear well targeted. We would not wish concerns about procedures to prevent the proposals for change the Committee is now having the opportunity to scrutinise, to prevent the welcome improvements that are being proposed.

1st November 2003 Evidence to Scottish Government

Community Land Scotland is pleased to be able to respond to the consultation questions on the above consultation in the following terms.

Community Land Scotland (CLS) strongly advocates the need for changes to Part 3 of the Land Reform (Scotland) Act 2003 in order to make its use simpler and fairer, while maintaining appropriate rigour to test what is in the public interest and furthers sustainable development.

CLS is conscious that others have insights into the challenges of the current Part 3. In particular Highlands and Islands Enterprise, but also experienced advisors to community owners, such as Simon Fraser. CLS is aware that Simon Fraser submitted evidence to the Local Government and Regeneration Committee on Part 3 and we commend his analysis of the issues and urge it is taken most seriously. In addition, John Randall, of Pairc Trust who have unrivalled experience of the practical issues, also submitted evidence in a personal capacity, and again we commend that evidence.

CLS has gained particular insights into the Pairc case and how the final reconciliation of positions represented in the level of agreement now reached between owner and community was achieved. Though yet to be finally concluded, the advanced stage of agreement now achieved was only reached by a process of voluntary mediation between the parties. While on this occasion that was possible, partly because of the physical location of the parties and the `mediator', it is not appropriate to leave such matters to chance and it would be helpful if this facility was

available to all communities and owners in future, should the need arise. This points to a simple power being given to Ministers to be able make suitable arrangements for such mediation, if requested to do so. That power currently does not exist and would be a helpful addition to wider simplification measures around Part 3 as set out in the Appendices to this submission (this could have application to part 2 as well).

For completeness, we attach as Appendices previous evidence we have given on issues around Part 3, much of this is overtaken by the current proposals, but not all of which have been picked up by the questions in the consultation.

CLS will be happy to provide such further additional information or clarifications as may be requested.

Responses to consultation questions

Question 1. The Scottish Government proposes to allow SCIOs and BenComs to be crofting community bodies in addition to companies limited by guarantee. Do you agree with this proposal? Are there any other types of body which you think should be permitted to be a crofting community body?

Agree with proposal, with Ministers having a power to add such other types of body as they may see fit to give future flexibility.

Question 2. The Scottish Government proposes removing the requirement for the auditing of accounts to be included in a company limited by guarantee's articles of association in order for it to be a crofting community body. This proposal would bring Part 3 of the Act in line with proposed amendments to Part 2 of the Act. Do you agree with this proposal?

Agree.

Question 3. The Scottish Government proposes expanding the definition of a crofting community. Do you agree with the proposal? Do you think that this is a more accurate description of a crofting community?

Generally agree. However, very few crofts will be registered on the new register for some time to come. Instead, or in combination, the Commission's existing Register should be used.

A further potentially complicating circumstance that should be considered is where the number of crofting tenants or owner occupiers registered outweigh those actually resident within the immediate area. It is not clear whether this circumstance may arise, but it potentially could.

Question 4. The Scottish Government proposes amending the existing mapping requirements which must be included in a Crofting Community Body's application. Do you agree with this proposal?

Agree, although it will be important to see the final and specific proposed wording of the change.

Question 5. The crofting community body's right-to-buy application must be advertised by Ministers by placing a public notice in a newspaper circulating in the area where the land or interests are located, and in the Edinburgh Gazette. The Scottish Government proposes that public notice of the crofting community body's right-to-buy application continues to be given by Ministers by advertisement, but that the form of this advertisement be set out in regulations. What is your view on this proposal?

Agree.

Question 6. The Scottish Government proposes that the owner, tenant, person entitled to sporting interests, (depending on the nature of land or interests that the application relates to) and any creditor in a standard security in relation to that land or interests are correctly identified in the application form in order for Ministers to consent to the crofting community body's application. What are your comments on the proposal?

It does not seem an unreasonable proposition for a community to use all its best endeavours to accurately identify owner, person, etc…. However, the question arises of what would happen if the owner, person, etc … could not, even after all reasonable steps had been taken by the community, be identified. This could arise by virtue of some of the complex and potentially overseas arrangements that can be put in place to hide ownership and beneficial interest, or simply by the passage of time, complex and dispersed ownership arrangements that can follow from one time changes in ownership. The same comment can be made about the Section 3A, which this proposal is designed to align with, and which Parliament has yet to consider. It is not clear why this change is necessary either for Part 3A or for this proposed section. This proposal would only be acceptable if accompanied by a provision to allow Ministers to, notwithstanding this provision, grant consent when they are satisfied that the community has taken all reasonable steps to identify the owner, person, etc …, but have been unable to do so.

Question 7. The Scottish Government proposes Ministers having a specific power to make regulations setting out the information that the crofting community body is required to provide to Ministers about the ballot, or any consultation that the crofting community body may have held with the community about their application. The crofting community body already are responsible for paying for the cost of the ballot. The Scottish Government proposes to expressly state in the Act that the crofting community body is liable for meeting the expense of conducting the ballot. What are your comments on the proposals?

The proposals in the Community Empowerment (Scotland) Bill regarding Part 2 of the Land Reform (Scotland) Act 2003 makes provision for the Scottish Government to in future take responsibility for the balloting arrangements and pay for such. As a matter of principle, this proposal was not seen as one of simply making it easier for the community body, it was also seen as a proposal which could ensure the proper conduct of any such ballot and which therefore provided re-assurance to the parties concerned and for the wider public interest. These latter reasons would apply equally and might even be seen to be more important to the conduct of ballots in the crofting community and in

circumstances where there was not a willing seller. There is therefore a case for the same provisions as it is proposed will apply to Part 2 (through revisions in CEB) to apply to this part. If the concern was simply one that in such circumstances Government would be funding a ballot on what was a `compulsory' sale, this could be readily justified as being appropriate to ensure proper conduct and public confidence in the conduct of such a ballot.

Question 8. The Scottish Government proposes that, when an application is extinguished under section 76, Ministers should be required to notify each person invited to give views on the application. This proposal aligns Part 3 with the proposed Part 3A of the Act. What is your view on this proposal?

Agreed.

Question 9. The Scottish Government proposes clarifying the certain persons listed in section 81(1) of the Act who may refer a question to the Land Court at any time before Ministers reach a decision on an application made under Part 3. What is your view on this proposal?

This does not seem unreasonable.

Question 10. The Scottish Government proposes increasing the timescale in which the valuer must notify the value of the land from 6 weeks to 8 weeks. Do you agree with this proposal?

Agreed.

Question 11. The Scottish Government proposes requiring the valuer to seek counter-representations when representations regarding the valuation of the land are received from the land owner, tenant, person entitled to sporting interests, as the case may be, or the crofting community body. Do you agree with this proposal?

Agreed.

Question 12. Section 89 of the Act allows compensation to be paid in respect of a loss or expense incurred in connection with a crofting community right-to-buy application. Ministers are already required to set out the procedure for claiming compensation by way of order. The Scottish Government proposes amending this order so that Ministers may, via an order, specify the amounts payable in respect of compensation and who is liable to pay these amounts. What are your views on the proposal?

This does not seem unreasonable.

Question 13. The Land Court is required to give its decision in writing within 4 weeks of the date of the hearing. The Scottish Government proposes removing the 4 week time limit, and remove the provision requiring the reasons to be provided in writing. What is your view of this proposal?

It is not clear why this is necessary or helpful to the parties involved. Having reasons in writing seem appropriate, as does having a reasonably short timescale for these matters being concluded.

Appendix 1

Submission to Land reform Review group first call for evidence – December 2012

Part 3 – The crofting community right-to-buy

The complexity of the requirements of Part 3 of the Act have become notorious and add such complexity to the requirements on communities that they are capable of being largely self-defeating to the principled intentions of Parliament. Some of the requirements have been described as Byzantine. Some of the detail exists in regulation, rather than primary legislation, though the primary legislation sets the tone for the detail in the regulations through provisions that are on the face of the Act.

The overwhelming need is to simplify procedures so that genuine and strong applications cannot be thwarted by legal action on technical grounds.

The procedures which have to be exercised by crofting community bodies under Part 3 in order to exercise their rights to purchase crofting land and related leases on behalf of their communities (i) are extremely complex and time-consuming; (ii) often appear to have no logical or functional rationale; and (iii) risk legal challenge on minor technical grounds.

The issues can best be understood by considering the application form for consent to buy eligible croft land (or the interest of the tenant in related tenanted land), which is prescribed by secondary legislation. It is accepted that a crofting community body should be required to demonstrate: (i) that they are properly constituted and represent the relevant crofting community; (ii) the boundaries of the land or lease they seek to buy; (iii) that the majority in the community (both crofters and the whole community) support the application; and (iv) that it is in the public interest that they should be given permission to buy the land or interest of the tenant.

However, there appears no logical or functional rationale for being required to provide the following:

- a map and written description showing not only the boundary of the land or lease to be acquired, but also all sewers, pipes, lines, watercourses or other conduits, and fences, dykes, ditches, or other boundaries (Question 4(d)). This goes far beyond what is required in other land or lease transactions, and there seems no functional reason to require this information. It is particularly absurd when the area to be purchased extends to several thousand hectares.

- a list of all postcodes and OS 1 Km grid squares included in the land or lease area to be purchased (Question 4(c)). Again there seems no reason for this if the boundary is properly defined on a map. If the area concerned extends to several thousand hectares, the list simply opens up scope for a technical challenge if particular postcodes or grid squares are inadvertently omitted.

- a full list of all those eligible to vote in the ballot, including distances away from the relevant township in the case of absentee crofters (Question 11)). The test should be evidence that a majority support the application, rather than providing

detailed lists which open up the possibility of legal challenge if any error or inconsistency is made.

Community Land Scotland would wish to see such existing requirements being abolished.

In the event that any rationale might be found for retaining any such provisions, then a criterion of proportionality should be explicitly applied to all such provisions so that an application which meets the essential purposes of the Act are not at risk of refusal or legal challenge on minor technical details. For example, an error in one voter issued with a ballot paper should not invalidate the result if there is a large majority in favour, and an error in the listing of one postcode or grid square should not invalidate an application if the boundary of the land or lease to be acquired is clear.

Time limits should be imposed on all stages of the process of application, comment, decision, and appeal, so that a landlord cannot unreasonably delay a decision on an application, or indefinitely hold up implementation of an approved application. The overall timescale should not be dissimilar, overall, to that applying to Part 2, from inception to completion of the process.

Appendix 2

Submission made in response to consultation on Community Empowerment Bill – January 2013

Part 3 – Further Issues

The Crofting Community Right-to-buy

The same points as are at Appendix 1 were repeated in this submission (above) plus

Crofting Community Definition [Probably now overtaken by current proposals]

The definition of a crofting community is complex and is centred on the location of residents in relation to the land to be acquired and also includes certain crofting tenants of the land but who reside outwith the boundary of the land in question. Maps in detail need to be prepared to establish who is a member of the crofting community.

The definition of a crofting community in the Crofting Acts is different from that of a crofting community in the Act. The former is a community of crofters which excludes non-crofters, and the latter is a community in a crofting area which includes non-crofters.

The Crofting Community Right-to-buy should be amended to allow the crofting community body to determine its own boundaries. We do not see any benefit in crofting community members being defined by their property having a contiguous boundary with the land to be acquired.

The Act might usefully rename a ‘crofting community’ to a ‘crofting area community’ to distinguish it from the ‘crofting community’.

Generic issues common to both Part 2 and Part 3

Serving notice on landowner

Serving the notice on the landowner if the registration reaches the stage where the intention to register is to be served on the landowner can be problematic. The property that the registration refers to is not adequate service if that property is not the landowners principal residence, even if it is occupied by his paid employees when he is not in residence. It is incumbent on the applicant to trace the landowner(s) main residence so that Scottish Government can serve the document there. Simplify this requirement would be helpful.

Community Definition – Choice to utilise Part 2 or Part 3

It is not possible for a single community body to be established to use both Part 2 and Part 3 of the Act. This is due to the different definition of community in these parts. If a crofting community body is to remain as an entity that is distinct from a community body then the relevant provisions should enable crofting community bodies to be eligible applicants under the Part 2 provisions. There could be times where a crofting community would prefer to register an interest in land rather than seek to acquire it under Part 3. At present a crofting community would have to opt to establish either a Part 2 compliant company or one that satisfies the requirements of Part 3. The crofting community cannot benefit from both of the LRA's right-to-buy provisions unless it establishes two community companies. This is unhelpful and unnecessary in our view.

The Act should be amended to allow crofting community bodies as defined under Part 3 to be able to register an interest in land under the Part 2 provisions.

Identifying the landowner

It can be difficult to identify the legal owner of land. Where a community body has taken all reasonable steps to do so a community's aspirations to register an interest or acquire an asset are should not be thwarted by virtue of not being able to identify the legal owner.

Provision should be made for this requirement to be set aside provided it can be shown all reasonable steps that could be taken have been taken.

Access to the Voters Role

Community bodies are not entitled to a copy of the voters roll.

The proposal that the Scottish Government might take responsibility for the organisation of the ballot may overcome this difficulty but this notwithstanding Community bodies should be given a right to the full Voters Roll for the purpose of any ballot they may organise in compliance with the requirements of the Act.

Other

It should be noted that the very act of having to secure a 10% threshold can have the effect of alerting the landowner of an interest in the land, potentially in some circumstances, precipitating the land being put on to the market, at which point the threshold for approval to submit an interest rises under the provision for late registration, if these are maintained.

In such circumstances a helpful change to current provisions would make it clear that the timeline for rules for a timeous registration should apply when the process for securing the 10% approval started when the land had not been advertised as being on the open market, even if it is on the market when the registration application is submitted.

Timeous and late registration - The criteria for late registration of an interest to buy are more onerous than for a timeous application. In practise, most recent purchases that have proceeded have been from late registrations.

It is not clear why a late registration should have more onerous conditions than a timeous one. This could have been conceived as a mechanism simply to encourage timeous applications, which are easier to achieve. However, given that the underlying intention of a timeous and late registration remain the same, to register an interest in land, and given the genuine reluctance of some communities to register an interest (for reasons set out elsewhere in this submission) it does not seem reasonable that the registration requirements should be so different, particularly given the ultimate ballot requirements for a right-to-buy purchase to be able to proceed.

Community Land Scotland believes it is important to continue to have late registration procedures, but that it should have the same 10% threshold requirements as the timeous registration requirements.

The 30 day confirmation period - Once a piece of land comes on to the market and the registered interest is triggered, the community has 30 days to confirm their intention to exercise their right-to-buy.

There has been some experience that such a period may fall during important holiday periods, and this can prove challenging. It is considered that making this requirement 30 working days would suitable relax the period.

Turnout and majority in ballot - In order to proceed to purchase the community body must be able to demonstrate that at least half the members of the community have voted in a ballot on the question and the majority of those voting have voted in favour. There are some circumstances where less than 50% have voted in the ballot, but the majority of those voting having voted in favour of purchase can be regarded by Ministers as sufficient.

Given the element of discretion available to Ministers there appears no need to change current requirements.

Some questions have been raised about the ability of an approved community body being entitled to access to registers of electors. Given the requirements of the Act it should be a matter put beyond doubt that Electoral Registrations Officers are required to give such properly constituted bodies access to current registers for the purposes of conducting ballots under the terms of the Act.

Buying the company owning the land

A number of communities for reasons associated with achieving practical progress and to suit the land owner concerned have bought the company that owns the land, together with its assets and liabilities, as the means to acquire land. It is likely this will require happen again.

It will be important to ensure that there are no provisions with the Act that would prevent progress under the Act being made when a community thought it right or expedient to purchase the Company that owns the land as the means to acquire the land itself.

Written submission from NFU Scotland

NFU SCOTLAND RESPONSE - CROFTING COMMUNITY RIGHT TO BUY - AMENDMENTS WITHIN COMMUNITY EMPOWERMENT BILL

Introduction

1. NFU Scotland (NFUS) is Scotland's premier farming lobby, representing around 8,500 members across Scotland, of whom 750 are crofters. Our dedicated Crofting Highlands and Islands Committee meets on a regular basis to represent crofting interests at local, regional and national levels.

2. NFUS understands that the Scottish Government has submitted amendments to the Community Empowerment Bill at Stage 2 relating to community right-to-buy. NFUS has engaged with this piece of legislation throughout the process, submitting evidence on the initial government consultation in January 2014 and again to the Local Government and Regeneration Committee in their examination of the Bill as introduced in September 2014. A submission was also issued to the Scottish Government's Agriculture, Food and Rural Communities Directorate in November 2014 relating specifically to the proposals for amendments to Crofting Community Right to Buy. This response is primarily based upon the points raised in these original submissions.

3. Primarily, NFUS is encouraged by the Bill, and considers that encouraging partnership-working with communities has wide-ranging benefits for the rural economy.

4. However, NFUS repeats concerns that there is not a concrete definition for what constitutes 'wholly or mainly abandoned or neglected' in the context of land. Parcels of land may be out of regular 'use' for periods of time when they are involved in an agricultural enterprise.

Crofting Community Right to Buy

5. NFUS recognises that the Bill's explanatory notes outline the purpose of the proposed amendments is to make the Crofting Community Right to Buy easier for crofting communities to use, while at the same time continuing to strike a fair balance between the rights of landowners and crofting communities. We are supportive in principle of these purposes and aims, however remain conscious that each crofting community buy-out must be required to put in place a long-term plan to ensure the economic sustainability of the scheme. Further detail on areas of concern are outlined in further detail below.

Section 71 – Community Bodies

6. In particular, in terms of the removal of provision for the auditing of accounts, NFUS suggests that whilst this will remove unnecessary burdens from community bodies, a structured auditing process should also be put in place to ensure that community bodies reinvest any income received in to the crofting community.

7. Regarding the provisions for community bodies that would be eligible to apply for a community buy-out, NFUS welcomes the extension of organisations defined as Crofting Community Bodies (CCB) however advises that advisory services from non-government bodies such as HIE and SAOS are employed.

8. NFU Scotland welcomes that the amendments recognise the current confusion in the definition of 'crofting communities'. However, again, we urge caution on who this definition is extended to. Whilst this amendment simply gives Ministers the regulation-making power to expand the definition of crofting community, we repeat concerns that use of the Crofting Register as a means of defining those included in the definition of 'crofting communities' is unwise. The Crofting Register is incomplete and it will be some time before it is sufficiently populated that it could be used in such a way. NFUS encourages Ministers to expand the uptake of the Crofting Register in the first instance.

Section 73 – Crofting land mapping and public notice of application

9. NFUS agrees that the mapping requirements should be simplified as much as possible. It is important to consider the scale at which the mapping is required and this will relate to the total size of croft land being purchased. However, at some stage it is important that all servitude rights and burdens are mapped and detailed in order for the community to know exactly what they are purchasing.

10. NFUS also agrees that greater flexibility is required in the placing of public notices in order to inform of the intention to purchase land. Clearly, it will be necessary for the community to demonstrate, as part of the application, that they have done their best to inform all members of the community, owners and adjacent landowners of the crofting community buy-out.

Section 75 – Ballot procedure

11. NFUS disagrees with the amendment's proposal to make CCBs liable for the cost of conducting a ballot, but welcomes the provision that allows the CCB to apply to Scottish Ministers to recover the costs, depending on specific circumstances.

Section 76 – Section 88

12. NFUS is satisfied with these proposals.

Section 89 - Compensation

13. NFUS agrees that there needs to be some mechanism to specify the amounts payable in respect of compensation and who is liable to pay these amounts, however we have some reservations as to whether this should be done by the Minister. We would prefer that it was done by an independent body or person.

Section 92 - Outcome of appeal to Land Court

14. NFU Scotland understands that the Land Court's own regulations require them to set out in writing any decision they make. Therefore, to have this requirement duplicated in this legislation would seem unnecessary. NFU Scotland, however, believe it is still necessary to have a set time limit by which point the Land Court have to respond by. We agree that in some very complex cases a 4 week time limit could be difficult to meet. We would therefore suggest that when necessary the Land Court could apply to Scottish Government/the Minister to extend this time limit where the Land Court can demonstrate that they need extra time to consider the case.

Written submission from Highlands and Islands Enterprise

INTRODUCTION

HIE's understanding of purpose and what the amendments seek to achieve.

Highlands and Islands Enterprise (HIE), as the Scottish Governments economic and community development agency for the Highlands and Islands, welcome the legislative framework being developed through the Community Empowerment (Scotland) Bill.

We are supportive of the amendments to Part 3 of the Land Reform (Scotland) Act 2003, therein.

In line with Government Economic Strategy (GES), our purpose is to generate sustainable economic growth in every part of the Highlands and Islands.

Our Operating Plan 2014-17 sets out our four priorities:

- Supporting businesses and social enterprises to shape and realise their growth aspirations
- Strengthen communities and fragile areas

- Developing growth sectors, particularly distinctive regional opportunities
- Creating the conditions for a competitive and low carbon region

Our work to support community ownership is an integral part of our approach to deliver on all of the above organisational priorities, recognising the contribution community asset ownership makes directly to the economy and society of our region, and to Scotland.

We are grateful to the Committee for enabling a further short input through this submission, in relation to the amendments now proposed. We would be pleased to provide further input if this is helpful to the Committee in due course.

Within the previous submissions we have made through the legislation development process, we outlined our experience over many years in regard to the complexity of Part 3 of the LRSA 2003 and hopefully this has highlighted the complex barriers faced by communities in implementing the spirit of the Act.

The amendments now proposed are very welcome, making substantial changes to the legislation and it's enabling provisions. We offer the following comment on each amendment.

Sections 71 and 72 Legal structure of community body.

This amendment is supported by HIE.

Section 71 – Removal of provision for auditing accounts.

This amendment is supported by HIE.

Section 71 – Amend definition of "crofting community".

An increasingly inclusive definition is welcome.

We would note that the Registers of Scotland Crofting Register (RoSCR) may not presently be sufficiently robust as a source from which to determine active and engaged crofting members however.

The recognition of owner occupiers and the subsequent legislative changes to the Crofters (Scotland) Act 1993 is welcomed yet this leads to a possible area of concern. Due to previous processes involving means testing, many active current croft owner occupiers are classified as absent and in turn, the relevant croft data held on the Crofting Commission register can be classified as vacant. We consider that the completeness of any data source leant on as primary data to underpin a legislative matter is of great importance.

We welcome the development and scrutiny of the current legislation proposals and we note that the amendment does include a power for Ministers to expand on the RoSCR.

We also note the ongoing work of the Crofting Commission in regard to the current census data gathering exercise, a practical but important consideration connected to

this legislation and we recognise the importance of effective dissemination of the census data in order to achieve the outcomes the legislation seeks to enable.

Section 73 – Croft land mapping.

This amendment is supported by HIE. We consider this a key amendment which will make a material and enabling change.

Section 73 – Public notice of application.

This amendment is supported by HIE.

Section 74(1) and 97B – Identification of owner, tenants and creditors.

This amendment is supported by HIE.

Section 75 – Ballot procedure.

The principle of this amendment is supported by HIE. In our earlier evidence submission we outlined some of the difficulties faced by communities in obtaining often multi layered information relating to land ownership. We would reiterate that a further amendment might be worded around the principle of "best endeavours demonstrated". These endeavours could be itemised and logged chronologically. HIE is pleased to note the opportunity for communities to work with Ministers and officials to minimise costs and that where these cost might escalate outwith the capacity of a community organisation then recourse is available to seek assistance from Ministers.

Section 89 – Compensation.

The principle of this amendment is supported by HIE, and whilst supportive we would encourage consideration be given the most effective, objective mechanism which can be brought to bear to service this issue.

Section 92 – Outcome of appeal to the Land Court.

This amendment is supported by HIE.