



RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

AGENDA

7th Meeting, 2011 (Session 3)

Wednesday 9 March 2011

The Committee will meet at 10.00 am in Committee Room 1.

1. **Decision on taking business in private:** The Committee will decide whether to take item 8 in private.
2. **Subordinate legislation:** The Committee will take evidence on the Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 from—

Richard Lochhead MSP, Cabinet Secretary for Rural Affairs and the Environment, Bruce Beveridge, Deputy Director, Rural Communities Division, Fiona Leslie, Land Tenure Branch, Agriculture and Rural Development Division, and Caroline Mair, Scottish Government Legal Directorate, Scottish Government.

3. **Subordinate legislation:** Richard Lochhead MSP to move S3M-7875— That the Rural Affairs and Environment Committee recommends that the Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 be approved.
4. **Subordinate legislation:** The Committee will consider the following negative instruments—

the Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011 (SSI 2011/57);

the Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Amendment Order 2011 (SSI 2011/59);

the Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Amendment Order 2011 (SSI 2011/60);

the Sea Fishing (Licences and Notices) (Scotland) Regulations 2011 (SSI 2011/70);

the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2011 (SSI 2011/73);

the Marine Licensing (Fees) (Scotland) Regulations 2011 (SSI 2011/78);

the Marine Licensing (Consultees) (Scotland) Order 2011 (SSI 2011/79);

the Marine Licensing (Register of Licensing Information) (Scotland) Regulations 2011 (SSI 2011/80);

the Reporting of Prices of Milk Products (Scotland) Amendment Regulations 2011 (SSI 2011/81);

the Milk and Milk Products (Pupils in Educational Establishments) (Scotland) Amendment Regulations 2011 (SSI 2011/82);

the Dairy Produce Quotas (Scotland) Amendment Regulations 2011 (SSI 2011/83);

the Drinking Milk (Scotland) Regulations 2011 (SSI 2011/84);

the Rural Development Contracts (Land Managers Options) (Scotland) Amendment Regulations 2011 (SSI 2011/85);

the Rural Development Contracts (Rural Priorities) (Scotland) Amendment Regulations 2011 (SSI 2011/106);

the Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2011 (SSI 2011/138); and

the Town and Country Planning (Marine Fish Farming) (Scotland) Amendment Regulations 2011 (SSI 2011/145).

5. **Petition PE1340:** The Committee will consider a petition by John Scott calling on the Scottish Parliament to urge the Scottish Government to extend and simplify the system of Tree Preservation Orders to give all trees a protection similar to that enjoyed by trees in conservation areas.
6. **Annual report:** The Committee will consider a draft annual report for the parliamentary year from 9 May 2010 to 22 March 2011.
7. **Post-legislative scrutiny of the Land Reform Act (Scotland) 2003 (in private):** The Committee will consider a draft letter to the Minister for Environment and Climate Change.
8. **Legacy paper:** The Committee will consider a draft report reflecting on its work during the current session and suggesting priorities for Session 4.

RAE/S3/11/7/A

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The papers for this meeting are as follows—

Agenda Item 2 and 3

Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 [no link available] RAE/S3/11/7/1

Agenda Item 4

[Marine Licensing \(Exempted Activities\) \(Scottish Offshore Region\) Order 2011 \(SSI 2011/57\)](#) RAE/S3/11/7/2

[Sea Fishing \(EU Recording and Reporting Requirements\) \(Scotland\) Amendment Order 2011 \(SSI 2011/59\)](#) RAE/S3/11/7/3

[Aquaculture and Fisheries \(Scotland\) Act 2007 \(Fixed Penalty Notices\) Amendment Order 2011 \(SSI 2011/60\)](#) RAE/S3/11/7/4

[Sea Fishing \(Licences and Notices\) \(Scotland\) Regulations 2011 \(SSI 2011/70\)](#) RAE/S3/11/7/5

[Less Favoured Area Support Scheme \(Scotland\) Amendment Regulations 2011 \(SSI 2011/73\)](#) RAE/S3/11/7/6

[Marine Licensing \(Fees\) \(Scotland\) Regulations 2011 \(SSI 2011/78\)](#) RAE/S3/11/7/7

[Marine Licensing \(Consultees\) \(Scotland\) Order 2011 \(SSI 2011/79\)](#) RAE/S3/11/7/8

[Marine Licensing \(Register of Licensing Information\) \(Scotland\) Regulations 2011 \(SSI 2011/80\);](#) RAE/S3/11/7/9

[Reporting of Prices of Milk Products \(Scotland\) Amendment Regulations 2011 \(SSI 2011/81\)](#) RAE/S3/11/7/10

[Milk and Milk Products \(Pupils in Educational Establishments\) \(Scotland\) Amendment Regulations 2011 \(SSI 2011/82\)](#) RAE/S3/11/7/11

Dairy Produce Quotas (Scotland) Amendment Regulations 2011 (SSI 2011/83) [no link available] RAE/S3/11/7/12

[Drinking Milk \(Scotland\) Regulations 2011 \(SSI 2011/84\)](#) RAE/S3/11/7/13

[Rural Development Contracts \(Land Managers Options\) \(Scotland\) Amendment Regulations 2011 \(SSI 2011/85\)](#) RAE/S3/11/7/14

[Rural Development Contracts \(Rural Priorities\) \(Scotland\) Amendment Regulations 2011 \(SSI 2011/106\)](#) RAE/S3/11/7/15

[Town and Country Planning \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(SSI 2011/138\)](#)

RAE/S3/11/7/16

[Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Amendment Regulations 2011 \(SSI 2011/145\)](#)

RAE/S3/11/7/17

Agenda Item 5

Clerk's Paper

RAE/S3/11/7/18

Agenda Item 6

Draft Report

RAE/S3/11/7/19

Agenda Item 7

Draft Letter (Private Paper) - to follow

RAE/S3/11/7/20

Agenda Item 8

Draft Report (Private Paper)

RAE/S3/11/7/21

For Information

Recent Developments

[RAE/S3/11/7/22](#)

D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

2011 No.

REGULATORY REFORM

LANDLORD AND TENANT

**The Public Services Reform (Agricultural Holdings) (Scotland)
Order 2011**

Made - - - -

2011

Coming into force in accordance with article 1

The Scottish Ministers make the following Order in exercise of the powers conferred by section 17(1) and (9) of the Public Services Reform (Scotland) Act 2010^(a) (“the Act”) and all other powers enabling them to do so.

The Scottish Ministers consider that the relevant conditions in section 18(2) of the Act are satisfied.

The Scottish Ministers have consulted in accordance with section 26 of the Act.

The Scottish Ministers have laid a draft of this Order and an explanatory document before the Scottish Parliament in accordance with section 25(2)(b) of the Act.

In accordance with section 25(2)(c) of the Act, a draft of this Order has been laid before and approved by resolution of the Scottish Parliament.

PART 1

INTRODUCTORY PROVISIONS

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 and comes into force on the day after the day on which it is made.

^(a) asp 8.

(2) In this Order—

“the 1991 Act” means the Agricultural Holdings (Scotland) Act 1991(a); and

“the 2003 Act” means the Agricultural Holdings (Scotland) Act 2003(b).

PART 2

AMENDMENT OF THE AGRICULTURAL HOLDINGS (SCOTLAND) ACT 1991

2. The 1991 Act is amended in accordance with articles 3 to 5.

Substitution of definition of “two-man unit” in Schedule 2

3. In Schedule 2 (grounds for consent to operation of notices to quit a tenancy where section 25(3) applies)—

(a) in Part I (grounds for consent to operation of notice to quit a tenancy let before 1 January 1984) and Part II (grounds for consent to operation of notice to quit a tenancy let on or after 1 January 1984) in Cases 2, 3, 6 and 7, for “two-man unit” substitute “viable unit”;

(b) in Part III (supplementary)—

(i) in paragraph 1, for the definition of “two-man unit” substitute—

““viable unit” means an agricultural unit which in the opinion of the Land Court is capable of providing an individual occupying it with full-time employment and the means to pay—

(a) the rent payable in respect of the unit; and

(b) for adequate maintenance of the unit.”; and

(ii) in paragraph 2, for “two-man unit” substitute “viable unit”.

Annulment of post lease agreements under section 5

4. For section 5(4B) (fixed equipment and insurance premiums)(c) substitute—

“(4B) This subsection is complied with if—

(a) subject to subsection (4BA), no later than 6 months before the date from which any variation of rent will take effect, the tenant gave written notice to the landlord stating that the agreement is to be nullified on that date;

(b) the rent is reviewed in accordance with the terms of the tenancy or is determined by the Land Court in accordance with section 13 of this Act; and

(c) on the date referred to in paragraph (a)—

(i) the buildings and other fixed equipment are in a reasonable state of repair; or

(ii) if the buildings and other fixed equipment were in an unreasonable state of repair when the agreement was made, they are not in a worse state of repair than they were then.

(4BA) Where a rent review is initiated less than 6 months before any variation of rent would take effect, subsection (4B)(a) is complied with if notice is given when it is initiated, or as soon as reasonably practicable thereafter.”.

(a) 1991 c.55.

(b) 2003 asp 11 (“the 2003 Act”).

(c) Subsection (4B) was inserted by section 60 of the 2003 Act.

Amendment of section 13

5. In section 13(1) (variation of rent)(a), after “Act,” insert, “following notice in writing served on the other party,”.

PART 3

AMENDMENT OF THE AGRICULTURAL HOLDINGS (SCOTLAND) ACT 2003

6. The 2003 Act is amended in accordance with articles 7 to 9.

Reduction in the minimum term of a limited duration tenancy from 15 years to 10 years

7.—(1) In section 5 (limited duration tenancies)—

- (a) in subsection (1)(a), for “fifteen” substitute “10”; and
- (b) in subsections (3) and (4), for “15” (wherever it appears) substitute “10”.

(2) In section 8(6) (continuation and termination of limited duration tenancies), for “fifteen” substitute “10”.

Conversion of a short limited duration to a limited duration tenancy by agreement

8. For section 5(2) (limited duration tenancies), substitute—

“(2) Where—

- (a) at any time before the expiry of the term of a short limited duration tenancy, the landlord and tenant agree in writing to convert the tenancy to a limited duration tenancy; or
- (b) the tenant remains in occupation of the land after the expiry of the term of a short limited duration tenancy of 5 years (including such a term fixed by virtue of section 4(2) or (3)) with the consent of the landlord,

the tenancy has effect as if it were for a term of 10 years commencing at the start of the term of the short limited duration tenancy, and the tenancy is, by virtue of this subsection, a limited duration tenancy.”.

Amendment to section 16 (fixed equipment)

9. For section 16(1) to (5) (fixed equipment etc.), substitute—

“(1) There is incorporated in every lease constituting a short limited duration tenancy or a limited duration tenancy an undertaking by the landlord that the landlord will—

- (a) within 6 months of the commencement of the tenancy or, where that is not reasonably practicable by virtue of any obligation on the landlord under any other enactment, as soon as reasonably practicable thereafter—
 - (i) provide such fixed equipment as will enable the tenant to maintain efficient production as respects the use of the land as specified in the lease; and
 - (ii) put the fixed equipment so provided into the condition specified in the schedule of fixed equipment that is required by virtue of subsection (2); and
- (b) during the tenancy, effect such renewal or replacement of the fixed equipment so provided as may be rendered necessary by natural decay or by fair wear and tear.

(a) Section 13(1) was amended by the 2003 Act, Schedule 1, paragraph 15(a)(i) and (ii).

(2) Where a lease constituting a short limited duration tenancy or a limited duration tenancy is entered into and fixed equipment is comprised in the lease, the parties must agree in writing a schedule of fixed equipment specifying—

- (a) the fixed equipment which the landlord will provide in terms of subsection (1)(a); and
- (b) the condition of the fixed equipment,

and on being so agreed (or, failing such agreement, on being determined in accordance with section 77 or 78 of this Act) the schedule of fixed equipment is deemed to form part of the lease.

(3) If at any time after the commencement of the tenancy the fixed equipment or its condition is varied, the landlord and tenant may agree to amend the schedule of fixed equipment accordingly or to substitute for it a new schedule.

(4) There is also incorporated in every such lease a provision that the liability of the tenant in relation to the maintenance of fixed equipment extends only to a liability to maintain the fixed equipment specified in the schedule of fixed equipment in as good a state of repair (natural decay and fair wear and tear excepted) as it was in—

- (a) immediately after it was put into the condition specified in the schedule of fixed equipment; or
- (b) in the case of equipment improved, provided, renewed or replaced, during the tenancy, immediately after it was so improved, provided, renewed or replaced.

(5) The cost of making and agreeing the schedule of fixed equipment under this section must, unless otherwise agreed, be borne by the landlord and tenant in equal shares.”.

PART 4

SAVINGS PROVISIONS

Savings

10.—(1) Articles 3, 4, 7, 8 and 9 are subject to paragraphs (2), (3), (4), (5) and (6) below, respectively.

(2) Where—

- (a) notice to quit is given to a tenant of an agricultural holding who was a near relative of the deceased tenant from whom he or she acquired right to the lease of the holding; and
- (b) the deceased tenant died prior to the day on which this Order comes into force,

section 25(3) of, and Schedule 2 to, the 1991 Act shall continue to have effect as if the amendments made by article 3 had not been made.

(3) Where in respect of a review of rent the landlord or the tenant has served a written notice on the other party intimating his or her intention to have the rent payable for the holding reviewed before this Order comes into force, section 5(4B) of the 1991 Act shall continue to have effect as if the substitution made by article 4 had not been made.

(4) In respect of a limited duration tenancy commenced before this Order comes into force, sections 5 and 8 of the 2003 Act shall continue to have effect as if the amendment made by article 7 had not been made.

(5) In respect of a short limited duration tenancy that has converted to a limited duration tenancy before this Order comes into force, section 5(2) of the 2003 Act shall continue to have effect as if the substitution made by article 8 had not been made.

(6) In respect of a short limited duration tenancy or a limited duration tenancy commenced before this Order comes into force, section 16 of the 2003 Act shall continue to have effect as if the substitution made by article 9 had not been made.

(7) Words or expressions—

- (a) used in paragraph (2) have the same meaning as they have in the 1991 Act;
- (b) used in paragraphs (4) to (6) have the same meaning as they have in the 2003 Act.

St Andrew's House,
Edinburgh

A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Agricultural Holdings (Scotland) Act 1991 (“1991 Act”) and the Agricultural Holdings (Scotland) Act 2003 (“2003 Act”).

Amendment of the 1991 Act

Two-man unit

Part III (supplementary) of Schedule 2 to the 1991 Act defines “two-man unit”, a term which appears in Parts I and II of that Schedule which set out the grounds for giving consent to the operation of notices to quit a tenancy where section 25(3) applies.

Article 3(b)(i) replaces the definition of “two-man unit” with “viable unit”; viability is predicated upon the capability of the agricultural unit to provide an individual occupying it with full time employment, the means to pay the rent and for adequate maintenance of the unit. Article 3(a) and (b)(ii) make changes consequent to that substitution.

Annulment of post lease agreements

Section 5(4A) to (4C) of the 1991 Act applies to agreements entered into under section 5(3) of the 1991 Act (which was repealed by the 2003 Act) whereby the landlord and tenant entered into agreements to alter their respective responsibilities in relation to fixed equipment (“post lease agreements”). Section 5(4A) and (4C) sets out the general principle that such agreements continue to have effect but can be nullified if subsection (4B) is complied with.

Article 4 substitutes subsection (4B), to provide that a tenant who wishes to have a post lease agreement nullified must notify the landlord of that fact in writing no later than 6 months before the date from which any variation of rent will take effect. Nullification has effect from the date from which any variation takes effect. On the date the variation takes effect it remains a requirement that the buildings and other fixed equipment are in a reasonable state of repair; or if the buildings and other fixed equipment were in an unreasonable state of repair when the agreement was made, they are not in a worse state of repair than they were then. Subsection (4BA) provides a shorter period of notice in cases where a rent review is initiated at less than 6 months’ notice.

Minor amendment to section 13

Section 13(1) of the 1991 Act requires that a party wishing to have the rent reviewed may have the question of what rent should be payable for the holding with effect from the review date referred to the Land Court. Article 5 amends section 13 to reinstate the wording that was deleted by paragraph 15 of the Schedule to the 2003 Act, to clarify that intimation of intention to make such a referral to the Land Court must be made by written notice.

Amendment of the 2003 Act

Reduction in the minimum term of a limited duration tenancy from 15 years to 10 years

Section 5(1) of the 2003 Act defines a Limited Duration Tenancy (“LDT”) as an agricultural tenancy (other than a 1991 Act tenancy) of at least 15 years duration. Article 7(1)(a) reduces the minimum term of an LDT from 15 years to 10 years. Article 7(1)(b) and (2) makes amendments consequent to this provision.

Conversion of a short limited duration to a limited duration tenancy by agreement

Section 5(2) of the 2003 Act provides that where a tenant under a Short Limited Duration Tenancy (“SLDT”) continues in occupation beyond the expiry date with the landlord’s consent and the period of occupation exceeds 5 years the tenancy becomes an LDT from the expiry of the 5 year period. Article 8 substitutes subsection (2) of section 5 to give parties the option to convert an SLDT to an LDT, in writing, prior to the expiry of the SLDT; the resultant LDT has effect as if it had commenced at the start of the SLDT.

Fixed equipment

Article 9 substitutes subsections (1) to (5) of section 16 of the 2003 Act. Its replacement provides for the landlord's obligations regarding the provision of fixed equipment to be determined by reference to the use of the land as specified in the lease (section 16(1)(a)). The fixed equipment is to be provided and put into the condition specified in the schedule of fixed equipment within six months of the commencement of the tenancy, unless that is not reasonably practicable because of an obligation on the landlord arising under another enactment (section 16(1)(a) and (b)). New section 16(2) requires tenants and landlords to agree in writing a schedule of fixed equipment specifying the fixed equipment the landlord will provide and its condition. The cost of preparing such a specification is to be borne by the parties equally, unless otherwise agreed (section 16(5)). New section 16(3) makes provision for the parties to amend the schedule of fixed equipment. Section 16(4) describes the extent of the tenant's duties as respects the maintenance of the fixed equipment provided.

Savings

Article 10 saves certain provisions of the 1991 Act and 2003 Act so that they continue to apply in the circumstances specified.

SCOTTISH STATUTORY INSTRUMENTS

2011 No. 57

ENVIRONMENTAL PROTECTION

LICENSING (MARINE)

**The Marine Licensing (Exempted Activities) (Scottish Offshore
Region) Order 2011**

| | | |
|-------------------------------|---------|--------------------------|
| <i>Made</i> | - - - - | <i>2nd February 2011</i> |
| <i>Laid before Parliament</i> | | <i>4th February 2011</i> |
| <i>Coming into force</i> | - - | <i>6th April 2011</i> |

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The Scottish Ministers make the following Order in exercise of the powers conferred by sections 74(1), (2) and (3) and 316(1) of the Marine and Coastal Access Act 2009^(a) and all other powers enabling them to do so.

In deciding to make this Order, the Scottish Ministers have had regard to the matters mentioned in section 74(4) of that Act.

The Scottish Ministers have carried out consultation in accordance with section 74(5) of that Act.

PART 1

Introductory provisions

Citation and commencement

1. This Order may be cited as the Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011 and comes into force on 6th April 2011.

Application

2. This Order applies in relation to any activity for which the Scottish Ministers are the appropriate licensing authority in terms of section 113(2) of the Act.

Interpretation

3. In this Order, except where the context otherwise requires—

“the Act” means the Marine and Coastal Access Act 2009;

“activity” means licensable marine activity^(b);

“disposal” has the meaning given by Article 3 of the Waste Framework Directive;

“a European site” means—

(a) a European site within the meaning of regulation 10(1) of the Conservation (Natural Habitats &c.) Regulations 1994^(c);

(b) a European offshore marine site within the meaning of regulation 15 of the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007^(d);

“exempt activity” has the meaning given by article 4;

“fish” includes shellfish and any part of a fish;

(a) 2009 c.23.

(b) See section 66 of the Act.

(c) S.I. 1994/2716.

(d) S.I. 2007/1842.

“fishing operation” includes fishing for or taking shellfish but does not include an activity relating to the propagation or cultivation of shellfish;

“item 10” means item 10 in section 66(1) of the Act;

“lighthouse authority” means a general lighthouse authority or a local lighthouse authority within the meaning of Part 8 of the Merchant Shipping Act 1995(a);

“an MPA” means a marine protected area designated under section 116 of the 2009 Act(b) or a Nature Conservation MPA designated under section 67 of the Marine (Scotland) Act 2010;

“plan or project” has the same meaning as in Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(c);

“shellfish” includes crustaceans and molluscs of any kind and any part of a shellfish;

“waste” means anything that—

(a) is waste within the meaning of Article 3(1) of the Waste Framework Directive, as read with Article 5(1) of that Directive; and

(b) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;

“the Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste(d).

PART 2

Exempt activities – general provisions

Exemption from need for marine licence

4.—(1) A marine licence is not needed for an activity that is an exempt activity.

(2) An activity is an exempt activity to the extent that—

(a) it is an activity to which an article in Part 3 applies; and

(b) it satisfies any conditions specified in that article in relation to that activity.

(3) But this is subject to paragraph (4) and article 4.

(4) Nothing in this Order makes an activity an exempt activity to the extent to which the carrying on of the activity is contrary to international law.

Activities relating to disposal or recovery of waste

5.—(1) An activity carried on by an establishment or undertaking involving the disposal or recovery of waste is not an exempt activity unless the conditions in this article are satisfied.

(2) Condition 1 is that the establishment or undertaking is carrying out—

(a) disposal of its own non-hazardous waste at the place of production; or

(b) recovery of waste.

(3) Condition 2 is that the type and quantity of waste involved, and the method of disposal or recovery, are consistent with the need to attain the objectives mentioned in Article 13 of the Waste Framework Directive.

(a) 1995 c.21. See section 193 of that Act, to which certain relevant amendments have been made by paragraph 6 of Schedule 6 to the Merchant Shipping and Maritime Security Act 1997 (c.28).

(b) Section 116(7) provides that a marine conservation zone designated by the Scottish Ministers under that section is to be known as a marine protected area.

(c) O.J. No. L 206, 22.7.1992, p.7, last amended by Council Directive 2006/105/EC (O.J. No. L 363, 20.12.2006, p.368).

(d) O.J. No. L 312, 22.11.2008, p.3.

(4) Condition 3 is that the establishment or undertaking must be registered with the Scottish Ministers.

(5) The Scottish Ministers must maintain a register containing the name and address of any establishment or undertaking carrying on an exempt activity involving the disposal or recovery of waste in the Scottish marine area.

(6) The register may be kept in any form.

(7) In this article—

- (a) “establishment” and “undertaking” have the same meaning as in Articles 23 and 24 of the Waste Framework Directive;
- (b) “recovery” has the meaning given by Article 3 of the Waste Framework Directive;
- (c) “non-hazardous waste” has the same meaning as in the Waste Framework Directive.

PART 3

Exempt activities and conditions

Interpretation of this Part

6. In this Part—

- (a) a reference to a “deposit” is a reference to a deposit falling within item 1 (deposits within UK marine licensing area), 3 (deposits from vehicle, vessel etc. loaded in UK marine licensing area) or, except as otherwise provided, 10 (deposit of explosives within UK marine licensing area);
- (b) a reference to a “dredging activity” is a reference to an activity falling within item 9 (dredging within UK marine licensing area);
- (c) a reference to a “removal activity” is a reference to an activity falling within item 8 (use of vehicle, vessel etc. to remove substance or object from sea bed within UK marine licensing area);
- (d) a reference to a “works activity” is a reference to an activity falling within item 7 (construction, alteration or improvement of works within UK marine licensing area).

Safety directions under the Merchant Shipping Act 1995

7. This article applies to an activity carried on—

- (a) by or on behalf of the Secretary of State in exercise of a power under Schedule 3A to the Merchant Shipping Act 1995(a) (safety directions);
- (b) by any person for the purpose of complying with a direction under that Schedule; or
- (c) by any person for the purpose of avoiding interference with action taken by virtue of that Schedule.

Salvage activities

8. This article applies to an activity carried on, in the course of a salvage operation, for the purpose of ensuring the safety of a vessel or preventing pollution.

(a) 1995 c.21; section 108A, which gives effect to Schedule 3A, was inserted by section 1(1) of the Marine Safety Act 2003 (c.16).

Fire fighting etc.

9. This article applies to an activity carried on for the purpose of fighting, or preventing the spread of, any fire.

Air accident investigation

10. This article applies to a deposit or removal activity carried on for the purpose of recovering any substance or object as part of an investigation into any accident involving an aircraft.

Fishing – deposits

11.—(1) This article applies—

- (a) to the deposit of fishing gear during the course of a fishing operation;
- (b) to the deposit by way of return to the sea—
 - (i) of any fish during the course of a fishing operation; or
 - (ii) of any other object during the course of a fishing operation, provided that the fish or other object has not been landed before being so returned;
- (c) to the deposit by way of return to the sea of any fish during the course of fish processing at sea.

(2) This article does not apply—

- (a) to a deposit of fishing gear made for the purpose of disposal;
- (b) except in the case of a deposit falling within paragraph (1)(b)(ii), to a deposit to the extent that it falls within item 10.

Fishing – removal activity and dredging activity

12. This article applies—

- (a) to a removal activity carried on for the purpose of removing fishing gear in the course of a fishing operation;
- (b) to a dredging activity carried on in the course of any fishing operation.

Deposits of marine chemical and marine oil treatment substances etc.

13.—(1) This article applies to the deposit of any—

- (a) marine chemical treatment substance;
- (b) marine oil treatment substance;
- (c) marine surface fouling cleaner.

(2) This article is subject to conditions 1 to 3.

(3) Condition 1 is that the substance must be one the use of which is for the time being approved for the purposes of this Order by the Scottish Ministers.

(4) Condition 2 is that the substance must be used in accordance with any conditions to which the approval is subject.

(5) Condition 3 is that no deposit must be made in an area of the sea of a depth of less than 20 metres or within one nautical mile of any such area except with the approval of the Scottish Ministers.

(6) In paragraph (1)—

- (a) “marine chemical treatment substance” and “marine oil treatment substance” have the same meaning as in section 107(2) of the Act;
- (b) “marine surface fouling cleaner” means any substance used or intended to be used for removing surface fouling matter from the surface of the sea or of the sea bed.

Deposit of equipment to control, contain or recover oil etc.

14.—(1) This article applies to the deposit of any equipment for the purpose of controlling, containing or recovering any—

- (a) oil;
- (b) mixture containing oil;
- (c) chemical;
- (d) flotsam; or
- (e) algal bloom.

(2) This article does not apply to a deposit to the extent that it falls within item 10.

Scientific instruments etc. – deposits

15.—(1) This article applies—

- (a) to the deposit of any scientific instrument or associated equipment in connection with any scientific experiment or survey;
- (b) to the deposit of any reagent or any chemical or particle tracer.

(2) In the case of the deposit of any reagent or chemical or particle tracer, this article is subject to the condition that the use of the reagent or the chemical or particle tracer must be for the time being approved for the purposes of this Order by the Scottish Ministers.

(3) This article does not apply to—

- (a) a deposit made for the purpose of disposal;
- (b) a deposit that causes or is likely to cause obstruction or danger to navigation;
- (c) a deposit—
 - (i) that falls within sub-paragraph (a), (b) or (c) of paragraph (4); and
 - (ii) that is not directly connected with or necessary to the management of the site or area referred to in that sub-paragraph.

(4) A deposit falls within this paragraph if—

- (a) it is a plan or project likely (either alone or in combination with other plans or projects) to have a significant effect on a European site; or
- (b) it is capable of affecting (other than insignificantly)—
 - (i) the protected features of an MPA;
 - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MPA is (wholly or in part) dependent.

(5) In paragraph (4)(a), “likely” has the same meaning as in Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

Scientific instruments etc. – removal activity

16.—(1) This article applies to a removal activity carried on for the purpose of removing any scientific instrument or associated equipment referred to in article 15(1)(a).

(2) This article does not apply to such an activity—

- (a) that falls within sub-paragraph (a), (b) or (c) of paragraph (3); and
- (b) that is not directly connected with or necessary to the management of the site or area referred to in that sub-paragraph.

(3) Such an activity falls within this paragraph if—

- (a) it is a plan or project likely (either alone or in combination with other plans or projects) to have a significant effect on a European site; or

- (b) it is capable of affecting (other than insignificantly)—
 - (i) the protected features of an MPA;
 - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MPA is (wholly or in part) dependent.

(4) In paragraph (4)(a), “likely” has the same meaning as in Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

Aggregates or mineral dredging – deposits

17. This article applies—

- (a) to the deposit, on the site of dredging for aggregates or other minerals, of any substance or object taken from the sea in the course of such dredging (other than any of the aggregates or minerals being dredged);
- (b) to the deposit of waters (whether by overflow or pumped discharge) from the hold of a vessel—
 - (i) in the normal course of dredging for aggregates or other minerals; or
 - (ii) at the site of such dredging following its completion or during the return journey of the vessel.

Deposits in the course of normal navigation or maintenance

18.—(1) This article applies to a deposit from a vehicle, vessel, aircraft or marine structure in the course of its normal navigation or maintenance.

(2) This article does not apply to a deposit—

- (a) made for the purpose of disposal;
- (b) to the extent that it falls within item 10.

Removal of obstruction or danger to navigation

19. This article applies to a removal activity carried on by or on behalf of a lighthouse authority for the purpose of removing anything causing or likely to cause obstruction or danger to navigation.

Moorings and aids to navigation – deposits and works activity

20.—(1) This article applies to a deposit or works activity carried on by—

- (a) a lighthouse authority; or
- (b) any other person in accordance with the approval or consent of any such authority,

for the purpose of providing a pile mooring, swinging mooring or aid to navigation.

(2) This article does not apply—

- (a) to the deposit of a pontoon;
- (b) to the construction of a pontoon.

Mooring and aids to navigation – removal activity

21. This article applies to a removal activity carried on for the purpose of removing a mooring or aid to navigation referred to in article 20(1).

Deposit and use of flares etc. – safety purposes and training

22. This article applies to the deposit or use of any distress flare, smoke float or similar pyrotechnic substance or object for the purpose of—

- (a) securing the safety of a vessel, aircraft or marine structure;
- (b) saving life; or
- (c) training for any purpose referred to in paragraph (a) or (b).

Cables and pipelines – authorised emergency inspection and repair

23.—(1) This article applies to a deposit, removal activity or dredging activity carried on for the purpose of executing emergency inspection or repair works to any cable or pipeline.

(2) This article is subject to the condition that the activity may only be carried on in accordance with an approval granted by the Scottish Ministers for that purpose.

(3) This article does not apply to any such deposit falling within item 10.

Rights of foreign vessels etc. under international law

24.—(1) This article applies to an activity to the extent that it is carried on in exercise of a right under rules of international law, by or in relation to—

- (a) a third country vessel;
 - (b) a warship, naval auxiliary, other vessel or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service (whether or not the warship, naval auxiliary or other vessel is a third country vessel).
- (2) In this article, “third country vessel” means a vessel which—
- (a) is flying the flag of, or is registered in, any State or territory (other than Gibraltar) which is not a member State; and
 - (b) is not registered in a member State.

Activities carried on in the Scottish inshore region

25. This article applies—

- (a) to an activity carried on in the Scottish inshore region; or
- (b) to the loading of a vehicle, vessel, aircraft, marine structure or floating container with any substance or object for incineration in the Scottish inshore region.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew's House,
Edinburgh
2nd February 2011

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies activities which are not to need a marine licence, or not to need a marine licence if conditions specified in the Order are satisfied. It applies to activities within the Scottish offshore region (within the meaning of section 322(1) of the Marine and Coastal Access Act 2009) in respect of which the Scottish Ministers are the marine licensing authority. Activities in that region in respect of which the Scottish Ministers are not the licensing authority are specified in section 113(3) of the 2009 Act.

Part 1 (articles 1 to 3) contains introductory provisions.

Part 2 (articles 4 and 5) contains provisions setting out when a marine licence is not needed for a licensable marine activity, and provisions relating to waste (which implement in part Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ No. L 312, 22.11.2008, p.3)).

Part 3 (articles 6 to 25) contains provisions setting out the licensable marine activities which do not need a marine licence (including any conditions that must be satisfied as part of that exemption).

SCOTTISH STATUTORY INSTRUMENTS

2011 No. 59

SEA FISHERIES

**The Sea Fishing (EU Recording and Reporting Requirements)
(Scotland) Amendment Order 2011**

Made - - - - *2nd February 2011*

Laid before the Scottish Parliament *4th February 2011*

Coming into force - - *7th March 2011*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(a) and paragraph 1A of Schedule 2 to the European Communities Act 1972(b) and all other powers enabling them to do so.

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972(c) and it appears to the Scottish Ministers that it is expedient for any reference, other than in Schedule 2, to Article 62, 63, 66, 67 or 68 of Council Regulation (EC) No. 1224/2009(d) to be construed as a reference to that Article as amended from time to time.

Citation and commencement

1. This Order may be cited as the Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Amendment Order 2011 and comes into force on 7th March 2011.

Amendment of the Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Order 2010

2. The Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Order 2010(e) is amended in accordance with articles 3 to 7.

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- (a) 1981 c.29 (“the 1981 Act”); relevant modifications are contained in the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (S.I. 1999/1748), article 5 and the Scotland Act 1998 (Modification of Functions) Order 1999 (S.I. 1999/1756), articles 3, 5 and 6. The functions of the Secretary of State, in or as regards Scotland, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46) (“the 1998 Act”). Definitions of “enforceable Community restriction”, “enforceable Community obligation” and “the Ministers” are contained in section 30(3) of the 1981 Act. Section 30 of the 1981 Act has effect in relation to Scotland as modified by section 30(5) of that Act, inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 68(5)(b).
- (b) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”), section 28 and amended by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), Schedule, Part 1.
- (c) Section 2(2) was amended by the 1998 Act, Schedule 8, paragraph 15(3) (which was amended by the 2006 Act, section 27(4)). Section 2(2) was also amended by the 2006 Act, section 27(1)(a) and the 2008 Act, Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred by virtue of section 53 of the 1998 Act.
- (d) O.J. No. L 343, 22.12.09, p.1. Council Regulation (EC) No. 1224/2009 is referred to as “the Control Regulation” in this Order.
- (e) S.S.I. 2010/334.

Amendment of article 3 (competent authority and methods of reporting)

3. In article 3(2)(b)(ii), for “Article 5(1) and (4) of Regulation 1077/2008” substitute “Articles 63 and 67 of the Control Regulation”(a).

Amendment of article 4 (register of fish buyers and sellers with the prescribed annual financial turnover)

4. In article 4—

- (a) in paragraph (1), after “Article 2(1) of Regulation 1077/2008” insert “(in which references to “EUR 400,000” are to be read as “EUR 200,000” for the purposes of Articles 63 and 67 of the Control Regulation)”; and
- (b) in paragraph (3), for “€400,000” substitute “€200,000”.

Amendment of article 5 (EU recording and reporting requirements)

5. In article 5(3), for “Articles 62 and 66” substitute “Articles 62, 63, 66 and 67”.

Amendment of article 15 (admissibility in evidence of logbooks and other documents)

6. In article 15(1), for sub-paragraphs (d) to (f) substitute—

- “(d) sales note submitted under Article 62, or sent under Article 63, of the Control Regulation;
- (e) declaration submitted under Article 66, or sent under Article 67, of the Control Regulation;
- (f) document drawn up under Article 68 of the Control Regulation; or”.

Amendment of Schedule 1 (EU recording and reporting requirements, contravention of which constitutes an offence)

7. In Schedule 1—

- (a) after entry 1(h) (relating to Article 62(5) of the Control Regulation), insert entry (ha) set out in Part 1 of Schedule 1 to this Order;
- (b) after entry 1(i) (relating to Article 66(1) and (3) of the Control Regulation), insert entries (j) and (k) set out in Part 2 of Schedule 1 to this Order;
- (c) omit entries 2(a) and (b) (relating to Article 5(1) and (4) of Regulation 1077/2008); and
- (d) omit entry 3(d) (relating to Article 13 of Regulation 2847/93).

Amendment of other sea fishing Orders

8. The amendments specified in Schedule 2 have effect.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
2nd February 2011

(a) Although Article 5(1) and (4) of Commission Regulation (EC) No. 1077/2008 (O.J. No. L 295, 4.11.08, p.3) is still in force, it is effectively superseded by Articles 63 and 67 of Council Regulation (EC) No. 1224/2009 (O.J. No. L 343, 22.12.09, p.1) (“the Control Regulation”). Regulation 1077/2008 is due to be repealed in early 2011 by a Commission Regulation laying down detailed rules for the implementation of the Control Regulation.

SCHEDULE 1

Article 7

Entries to be inserted into Schedule 1 to the Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Order 2010

PART 1

| <i>Column 1 Provision</i> | <i>Column 2 Detailed Rules</i> | <i>Column 3 Subject Matter</i> | <i>Column 4 Persons liable</i> |
|----------------------------------------------------------------------------|------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. The Control Regulation | | | |
| “(ha) Article 63(1), as read with Article 64 and subject to Article 65(2). | | <p>In relation to registered buyers, registered auctions or other bodies or persons authorised by Member States that are responsible for the first marketing of fisheries products landed in a Member State and have an annual financial turnover in first sales of fisheries products of €200,000 or more—</p> <p>Requirement to: (a) record sales note data by electronic means, and (b) send that data by electronic means to the competent authority of the Member State where the first sale takes place within 24 hours of the first sale.</p> | <p>The registered buyer, the registered auction or other authorised body or person responsible for the first sale of the fishery products.</p> <p style="text-align: right;">”</p> |

PART 2

| <i>Column 1 Provision</i> | <i>Column 2 Detailed Rules</i> | <i>Column 3 Subject Matter</i> | <i>Column 4 Persons liable</i> |
|-------------------------------|------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. The Control Regulation | | | |
| “(j) Article 67(1). | | <p>In relation to registered buyers, registered auctions or other bodies or persons authorised by Member States that are responsible for the first marketing of fisheries products landed in a Member State and have an annual financial turnover in first sales of fisheries products of €200,000 or more, and where fisheries products are intended for sale at a later stage—</p> <p>Requirement to: (a) record take-over declaration data by electronic means, and (b) send that data by electronic means to the competent authority of the Member State where the take-over takes place within 24 hours of landing.</p> | <p>The registered buyer, the registered auction or other authorised body or person responsible for the first sale of the fisheries products.</p> <p style="text-align: right;">”</p> |

| | | | |
|--------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>“(k) Article 68(1), (3), (5) and (7), subject to Article 68(2) and (8).</p> | | <p>In relation to fisheries products that are landed in the EU (either unprocessed or having been processed on board), for which neither a sales note nor a take-over declaration has been submitted in accordance with Article 62, 63, 66 or 67 of the Control Regulation, and which are transported to a place other than that of landing—</p> <p>Requirement to: (a) draw up a transport document; (b) ensure that it accompanies the fisheries products until the first sale; (c) submit the transport document to the competent authority of the Member State where the landing takes place and, where the products are transported to a different Member State, submit a copy of the transport document to the competent authority of the Member State where the first marketing is declared to take place, both within 48 hours of loading the fisheries products, and (d) prove at all times by documentary evidence that a sales transaction has taken place, in cases where fisheries products have been declared as sold in a sales note and are transported to a location other than the place of landing.</p> | <p>The transporter of fisheries products. (“Transporter” means the owner of, the hirer of, and the person responsible for, any vehicle used to transport fisheries products.)</p> <p>”</p> |
|--------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

SCHEDULE 2

Article 8

Amendment of other sea fishing Orders

The Sea Fishing (Transitional EU Technical Conservation Measures) (Scotland) Order 2010

1.—(1) The Sea Fishing (Transitional EU Technical Conservation Measures) (Scotland) Order 2010(**a**) is amended as follows.

(2) In article 12 (admissibility in evidence of logbooks and other documents), for paragraph (1)(d) to (f) substitute—

- “(d) sales note submitted under Article 62, or sent under Article 63, of Regulation 1224/2009;
- (e) declaration submitted under Article 66, or sent under Article 67, of Regulation 1224/2009;
- (f) document drawn up under Article 68 of Regulation 1224/2009; or”.

The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2010

2.—(1) The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2010(**b**) is amended as follows.

(2) In article 2 (interpretation)—

(a) in paragraph (1)—

- (i) omit the definition of “Regulation 23/2010”; and
- (ii) after the definition of “Regulation 237/2010” insert—

““Regulation 57/2011” means Council Regulation (EU) No. 57/2011 of 18 January 2011 fixing for 2011 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in certain non-EU waters(**c**)”; and

(b) in the following provisions, for “23/2010” substitute “57/2011”—

- (i) paragraph (1), in the definitions of “cod recovery zone”, “equivalent provision” and “regulated gear”; and
- (ii) paragraph (4).

(3) In article 14 (admissibility in evidence of logbooks and other documents), for paragraph (1)(d) to (f) substitute—

- “(d) sales note submitted under Article 62, or sent under Article 63, of the Control Regulation;
- (e) declaration submitted under Article 66, or sent under Article 67, of the Control Regulation;
- (f) document drawn up under Article 68 of the Control Regulation; or”.

(a) S.S.I. 2010/100.

(b) S.S.I. 2010/238.

(c) O.J. No. L 24, 27.1.11, p.1.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Order 2010 (“the principal Order”).

The principal Order enforces certain EU obligations contained in Council Regulations (EEC) No. 2847/93 (“Regulation 2847/93”)(a), (EC) No. 1006/2008(b) and (EC) No. 1224/2009 (“the Control Regulation”)(c) and Commission Regulations (EC) No. 1077/2008 (“Regulation 1077/2008”)(d) and (EU) No. 201/2010(e). These require the recording and reporting of information relating to fishing activity undertaken in EU waters, or by EU fishing boats, and the landing and first sale of fishery products in the EU.

This Order amends the principal Order so as to enforce the following provisions of the Control Regulation, which came into force on 1st January 2011—

- (a) Articles 63 and 67, which replace Article 5(1) and (4) of Regulation 1077/2008 and require registered fish buyers and sellers with an annual financial turnover in first sales of fishery products of €200,000 or more (previously €400,000 or more) to record and report sales note and take-over declaration data electronically; and
- (b) Article 68, which replaces and largely re-enacts Article 13 of Regulation 2847/93 to require transporters of fishery products to draw up and submit a transport document in certain circumstances.

This Order amends the following provisions of the principal Order—

- (a) articles 3(2)(b)(ii) and 15(1)(d) to (f) (relating to methods of reporting data and the admissibility in evidence of logbooks and other documents respectively), to replace references to Article 5(1) and (4) of Regulation 1077/2008 and Article 13 of Regulation 2847/93 with references to Articles 63, 67 and 68 of the Control Regulation respectively (articles 3 and 6 of this Order);
- (b) articles 4(1) and (3) and 5(3) (relating to the financial threshold for the requirement to record and report sales note and take-over declaration data electronically), to revise the prescribed annual financial turnover (defined in the principal Order) to €200,000 or more, and to specify how that threshold is calculated, for the purposes of Articles 63 and 67 of the Control Regulation (articles 4 and 5 of this Order); and
- (c) Schedule 1 (specifying those EU recording and reporting requirements, contravention of which constitutes an offence), to omit entries 2(a) and (b) and 3(d) (relating to Article 5(1) and (4) of Regulation 1077/2008 and Article 13 of Regulation 2847/93 respectively) and to make it an offence to contravene Article 63, 67 or 68 of the Control Regulation (punishable by a fine on conviction on indictment, and by a maximum fine of £50,000 on summary conviction) (article 7 of, and Schedule 1 to, this Order).

This Order also amends the Sea Fishing (Transitional EU Technical Conservation Measures) (Scotland) Order 2010 (“S.S.I. 2010/100”) and the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2010 (“S.S.I. 2010/238”) so as to—

- (a) update references in article 12(1) of S.S.I. 2010/100 and article 14(1) of S.S.I. 2010/238 (relating to the admissibility in evidence of logbooks and other documents) in consequence of Article 5(1) and (4) of Regulation 1077/2008 and Article 13 of Regulation 2847/93 being replaced by Articles 63, 67 and 68 of the Control Regulation respectively (article 8 of, and paragraphs 1(2) and 2(3) of Schedule 2 to, this Order); and

(a) O.J. No. L 261, 20.10.93, p.1.
(b) O.J. No. L 286, 29.10.08, p.33.
(c) O.J. No. L 343, 22.12.09, p.1.
(d) O.J. No. L 295, 4.11.08, p.3.
(e) O.J. No. L 61, 11.3.10, p.10.

- (b) update references to EU legislation in article 2(1) and (4) of S.S.I. 2010/238 in consequence of the provisions in Annex IIA to Council Regulation (EU) No. 23/2010^(a) being replaced by, and re-enacted in, Annex IIA to Council Regulation (EU) No. 57/2011^(b) (article 8 of, and paragraph 2(2) of Schedule 2 to, this Order).

No Business and Regulatory Impact Assessment has been prepared for this instrument as it has no impact on the cost of business.

^(a) O.J. No. L 21, 26.1.10, p.1 (subsequently re-numbered as Council Regulation (EU) No. 53/2010).

^(b) O.J. No. L 24, 27.1.11, p.1.

SCOTTISH STATUTORY INSTRUMENTS

2011 No. 60

SEA FISHERIES

**The Aquaculture and Fisheries (Scotland) Act 2007 (Fixed
Penalty Notices) Amendment Order 2011**

Made - - - - *2nd February 2011*

Laid before the Scottish Parliament *4th February 2011*

Coming into force - - *7th March 2011*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 25(2)(b), 27(3), 29(2)(b) and 43(1)(b) of the Aquaculture and Fisheries (Scotland) Act 2007^(a) and all other powers enabling them to do so.

Citation and commencement

1. This Order may be cited as the Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Amendment Order 2011 and comes into force on 7th March 2011.

Amendment of the Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Order 2008

2. The Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Order 2008^(b) is amended in accordance with articles 3 to 5.

Amendment of article 5 (address at which and method by which fixed penalty is payable)

3. In article 5(1), for “Scottish Government, Banking Section, Financial Management Branch, Mail Point 8, Area 3-A South, Victoria Quay, Edinburgh EH6 6QQ” substitute “The Scottish Government, Treasury and Banking Branch, Victoria Quay, Edinburgh, EH6 6QQ”.

Amendment of article 6 (person to whom and address to which intimation of non payment of fixed penalty to be sent)

4. In article 6, for “Head of Prosecutions and Enforcement Policy, SFPA, Room 527, Pentland House, 47 Robbs’s Loan, Edinburgh, EH14 1TY” substitute “Head of Enforcement Operations, Marine Scotland – Compliance, The Scottish Government, Victoria Quay, Edinburgh, EH6 6QQ”.

(a) 2007 asp 12.

(b) S.S.I. 2008/101, amended by S.S.I. 2008/151.

Substitution of Schedule 1 (relevant offences for the purposes of section 25(1) of the Aquaculture and Fisheries (Scotland) Act 2007)

5. For Schedule 1 substitute the Schedule set out in the Schedule to this Order.

Revocation

6. The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures and Restriction on Days at Sea) (Scotland) Order 2008(a) (so far as not previously revoked) is revoked.

RICHARD LOCHHEAD

A member of the Scottish Executive

St Andrew's House,
Edinburgh
2nd February 2011

(a) S.S.I. 2008/151; articles 2 to 33 were revoked by S.S.I. 2009/317, article 21.

SCHEDULE

Article 5

Substitution of Schedule 1 to the Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Order 2008

“SCHEDULE 1

Article 2

Relevant offences for the purposes of section 25(1) of the Aquaculture and Fisheries (Scotland) Act 2007

PART 1

Enactments under or by virtue of which relevant offences are created

| <i>Enactment</i> | <i>Offence provision</i> |
|---------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|
| Sea Fisheries (Shellfish) Act 1967(a) | Section 17(1) |
| Sea Fish (Conservation) Act 1967(b) | Sections 4(6), (7) and (7A) and 4A(6), (7) and (8) |
| Fishery Limits Act 1976(c) | Section 2(5) |
| Fisheries Act 1981(d) | Section 30(1)(a) |
| Inshore Fishing (Scotland) Act 1984(e) | Section 4(1) and (1A) |
| The Foreign Fishing Boats (Stowage of Gear) Order 1970(f) | Article 3, as read with section 2(5) of the Fishery Limits Act 1976(g) |
| The Salmon and Migratory Trout (Restrictions on Landing) Order 1972(h) | Article 3, as read with section 6(5) of the Sea Fish (Conservation) Act 1967(i) |

-
- (a) 1967 c.83; section 17(1) was amended by the Marine and Coastal Access Act 2009 (c.23), section 212(2) (which extends to Scotland by virtue of section 323(4)(g)(i) of that Act).
- (b) 1967 c.84 (“the 1967 Act”); section 4(6) was amended by the Sea Fish (Conservation) Act 1992 (c.60) (“the 1992 Act”), section 1(2). Section 4(7) was amended by the Fisheries Act 1981 (c.29) (“the 1981 Act”), section 20(2) and the 1992 Act, section 1(4). Sections 4(7A) and 4A were inserted by the 1981 Act, sections 20(3) and 21(1) respectively. Section 4A(7) was amended by the 1992 Act, section 3(2). Sections 4(6) and (7) and 4A(6) and (7) are modified in relation to Scotland by section 22A(3) of the 1967 Act (as inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (“S.I. 1999/1820”), Schedule 2, paragraph 43(13)).
- (c) 1976 c.86 (“the 1976 Act”); section 2(2) to (4) (contravention of which is an offence under section 2(5)) was amended by S.I. 1999/1820, Schedule 2, paragraph 57(2)(a) and is modified in relation to Scotland by section 2(9)(a) and (b) of the 1976 Act (as inserted by S.I. 1999/1820, Schedule 2, paragraph 57(2)(b)).
- (d) 1981 c.29; section 30(1) was amended by the Aquaculture and Fisheries (Scotland) Act 2007, asp 12, section 33.
- (e) 1984 c.26; section 4(1A) was inserted by the Inshore Fishing (Scotland) Act 1994 (c.27), section 2.
- (f) S.I. 1970/318.
- (g) S.I. 1970/318 was made under section 6(4) of the Sea Fisheries Act 1968 (c.77). Section 6(4) was repealed by the 1976 Act, Schedule 4, subject to transitional provisions in the 1976 Act, Schedule 3, paragraph 7. Section 2(5) of the 1976 Act applies by virtue of those transitional provisions.
- (h) S.I. 1972/1966, amended by S.I. 1975/639 and 1983/58. Article 3 was amended by S.I. 1983/58, article 2.
- (i) Section 6(5) of the 1967 Act was amended by the 1981 Act, section 23(3).

| <i>Enactment</i> | <i>Offence provision</i> |
|-----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| The Salmon and Migratory Trout (Prohibition of Fishing) (No. 2) Order 1972(a) | Article 3(1), as read with section 5(1), (6) and (7) of the Sea Fish (Conservation) Act 1967(b) |
| The Molluscan Shellfish (Control of Deposit) Order 1974(c) | Article 5, as read with section 14(2) of the Sea Fisheries (Shellfish) Act 1967(d) |
| The Molluscan Shellfish (Control of Deposit) (Scotland) Order 1978(e) | Article 5, as read with section 14(2) of the Sea Fisheries (Shellfish) Act 1967 |
| The Lobsters (Control of Deposit) Order 1981(f) | Article 6, as read with section 14(2) of the Sea Fisheries (Shellfish) Act 1967 |
| The Lobsters (Control of Importation) Order 1981(g) | Article 5, as read with section 14(2) of the Sea Fisheries (Shellfish) Act 1967 |
| The Receiving of Trans-shipped Sea Fish (Licensing) Order 1982(h) | Article 3, as read with section 4A(3) of the Sea Fish (Conservation) Act 1967 |
| The Sea Fishing (Enforcement of Community Licensing Measures) (North of Scotland Box) Order 1984(i) | Article 3 |
| The Scallops (Irish Sea) (Prohibition of Fishing) Order 1984(j) | Article 2, as read with section 5(1), (6) and (7) of the Sea Fish (Conservation) Act 1967 |

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- (a) S.I. 1973/207; article 3 was amended by S.I. 1975/844, article 3 and S.I. 1983/60, article 2.
- (b) Section 5(1) of the 1967 Act was substituted by the 1981 Act, section 22(1). Section 5(6) (contravention of which is an offence by virtue of section 5(7)) was amended by the 1981 Act, section 22(2).
- (c) S.I. 1974/1555, amended by S.I. 1983/159.
- (d) Section 14(2) of the Sea Fisheries (Shellfish) Act 1967 was amended by the Criminal Procedure (Scotland) Act 1975 (c.21), sections 289E and 289G(4) and the Criminal Justice and Public Order Act 1994 (c.33), Schedule 8, Part 1.
- (e) S.I. 1978/560.
- (f) S.I. 1981/994.
- (g) S.I. 1981/995.
- (h) S.I. 1982/80; article 3 was substituted by S.I. 1983/1139, article 2.
- (i) S.I. 1984/291; article 3 was amended by the Criminal Procedure (Scotland) Act 1975, section 289 GD.
- (j) S.I. 1984/1523; article 2 and the Schedule (referred to in article 2) were substituted by S.I. 1986/988, article 3 and the Schedule respectively.

| <i>Enactment</i> | <i>Offence provision</i> |
|---------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The Inshore Fishing (Salmon and Migratory Trout) (Prohibition of Gill Nets) (Scotland) Order 1986(a) | Article 3, as read with section 4(1) and (1A) of the Inshore Fishing (Scotland) Act 1984 |
| The Undersized Velvet Crabs Order 1989(b) | Articles 2(1) and 3(1), as read with section 1(1), (2) and (7) of the Sea Fish (Conservation) Act 1967, and article 4, as read with section 1(3) and (8) of that Act(c) |
| The Sandeels Licensing Order 1989(d) | Article 2, as read with section 4(3) of the Sea Fish (Conservation) Act 1967 |
| The Sea Fish (Specified Sea Area) (Regulation of Nets and Prohibition of Fishing Methods) Order 1989(e) | Article 2, as read with sections 3(5) and 5(1) of the Sea Fish (Conservation) Act 1967 |
| The Undersized Bass Order 1989(f) | Article 3, as read with section 1(1) and (7) of the Sea Fish (Conservation) Act 1967 |
| The Sea Fish (Specified Manx Waters) Licensing Order 1990(g) | Article 3(1), as read with section 4(3) of the Sea Fish (Conservation) Act 1967 |
| The Sea Fishing (Specified Western Waters) (Restrictions on Landing) Order 1990(h) | Article 3, as read with section 6(5) of the Sea Fish (Conservation) Act 1967 |

(a) S.I. 1986/59.

(b) S.I. 1989/919.

(c) Section 1 of the 1967 Act was substituted by the 1981 Act, section 19(1). Section 1(1), (2) and (3) (contravention of which is an offence by virtue of section 1(7) and (8) of the 1967 Act respectively) and section 1(8) of the 1967 Act was amended by S.I. 1999/1820, Schedule 2, paragraph 43(2) and (3)(a) and (b) and is modified in relation to Scotland by section 22A(2) of the 1967 Act (as inserted by S.I. 1999/1820, Schedule 2, paragraph 43(13)).

(d) S.I. 1989/1066.

(e) S.I. 1989/1284; article 2 was amended by S.I. 1999/74, article 2(2).

(f) S.I. 1989/1285.

(g) S.I. 1990/2051.

(h) S.I. 1990/2052.

| <i>Enactment</i> | <i>Offence provision</i> |
|---------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The Sea Fish Licensing Order 1992(a) | Article 3(1), as read with section 4(3) of the Sea Fish (Conservation) Act 1967 |
| The Fishing Boats (Marking and Documentation) (Enforcement) Order 1993(b) | Article 3 |
| The Inshore Fishing (Monofilament Gill Nets) (Scotland) Order 1996(c) | Articles 2 and 3(1), as read with section 4(1) and (1A) of the Inshore Fishing (Scotland) Act 1984 |
| The Food Protection (Emergency Prohibitions) (Dounreay Nuclear Establishment) Order 1997(d) | Articles 4, 5 and 6, as read with section 1(6) of the Food and Environment Protection Act 1985(e) |
| The Lobsters and Crawfish (Prohibition of Fishing and Landing) (Scotland) Order 1999(f) | Article 3, as read with section 5(1), (6) and (7) of the Sea Fish (Conservation) Act 1967, and article 4, as read with section 6(5) of that Act |
| The Sea Fishing (Enforcement of Community Conservation Measures) (Scotland) Order 2000(g) | Article 3(1) and (2) |
| The Undersized Lobsters (Scotland) Order 2000(h) | Articles 3(1) and 4(1), as read with section 1(1), (2) and (7) of the Sea Fish (Conservation) Act 1967, and article 5, as read with section 1(3) and (8) of that Act |
| The Undersized Spider Crabs (Scotland) Order 2000(i) | Article 3(1), as read with section 1(1) and (7) of the Sea Fish (Conservation) Act 1967 |

(a) S.I. 1992/2633, amended by S.I. 1993/188, 1993/2291 and 1999/1820. Article 3(1) was amended by S.I. 1999/1820, Schedule 2, paragraph 150(3).

(b) S.I. 1993/2015.

(c) S.I. 1996/1907.

(d) S.I. 1997/2622.

(e) 1985 c.48.

(f) S.S.I. 1999/88.

(g) S.S.I. 2000/53, amended by S.S.I. 2002/81.

(h) S.S.I. 2000/197.

(i) S.S.I. 2000/198.

| <i>Enactment</i> | <i>Offence provision</i> |
|------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|
| The Sea Fish (Specified Sea Areas) (Regulation of Nets and Other Fishing Gear) (Scotland) Order 2000(a) | Articles 4, 4A, 5 and 5A, as read with section 3(5) of the Sea Fish (Conservation) Act 1967 |
| The Undersized Edible Crabs (Scotland) Order 2000(b) | Article 3(1), as read with section 1(1) and (7) of the Sea Fish (Conservation) Act 1967 |
| The Prohibition of Fishing with Multiple Trawls (No. 2) (Scotland) Order 2000(c) | Article 3(1), as read with section 5(1), (6) and (7) of the Sea Fish (Conservation) Act 1967 |
| The Sea Fishing (North-East Atlantic Control Measures) Order 2000(d) | Article 13 |
| The Prohibition of Fishing for Scallops (Scotland) Order 2003(e) | Articles 3, 4 and 5, as read with section 5(1), (6) and (7) of the Sea Fish (Conservation) Act 1967 |
| The Ura Firth, Shetland Scallops Several Fishery Order 2004(f) | Article 3, as read with section 7(4) of the Sea Fisheries (Shellfish) Act 1967(g) |
| The Shrimp Fishing Nets (Scotland) Order 2004(h) | Article 3, as read with section 3(5) of the Sea Fish (Conservation) Act 1967 |
| The Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Order 2004(i) | Articles 3, 5, 6, 7, 9(1) and 10(1), as read with section 4(1) and (1A) of the Inshore Fishing (Scotland) Act 1984 |
| The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Scotland) Order 2004(j) | Article 9 |

(a) S.S.I. 2000/227, amended by S.S.I. 2001/250, 2003/167, 2009/165 and 2010/231. Article 4 was amended by S.S.I. 2001/250, article 4. Article 4A was inserted by S.S.I. 2009/165, article 2(4). Article 5 was amended by S.S.I. 2009/165, article 2(5). Article 5A was inserted by S.S.I. 2001/250, article 6.

(b) S.S.I. 2000/228.

(c) S.S.I. 2000/405; article 3 was substituted by S.S.I. 2007/13, article 2(2).

(d) S.I. 2000/1843, amended by S.I. 2005/617.

(e) S.S.I. 2003/371.

(f) S.S.I. 2004/5.

(g) Section 7(4) of the Sea Fisheries (Shellfish) Act 1967 was amended by the Sea Fisheries (Shellfish) Amendment (Scotland) Act 2000, asp 12, section 1.

(h) S.S.I. 2004/261; article 3 was amended by S.S.I. 2008/10, article 2.

(i) S.S.I. 2004/276.

(j) S.S.I. 2004/392.

| <i>Enactment</i> | <i>Offence provision</i> |
|-----------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| The Sea Fish (Marketing Standards) (Scotland) Regulations 2004 (a) | Regulation 3(1) and (2) |
| The Registration of Fish Sellers and Buyers and Designation of Auction Sites (Scotland) Regulations 2005 (b) | Regulations 3(7) and (8), 4(1), 5(6) and (7), 6(6) and (7), 7(7) and (8), 8, 9(6) and (7), 10 and 11(1) |
| The Loch Crinan Scallops Several Fishery Order 2005 (c) | Article 3, as read with section 7(4) of the Sea Fisheries (Shellfish) Act 1967 |
| The Prevention and Monitoring of Cetacean Bycatch (Scotland) Order 2005 (d) | Articles 3(2) and 4(1) |
| The Sea Fishing (Marking and Identification of Passive Fishing Gear and Beam Trawls) (Scotland) Order 2006 (e) | Article 14 |
| The Inshore Fishing (Prohibition of Fishing for Cockles) (Scotland) (No. 3) Order 2006 (f) | Article 2, as read with section 4(1) and (1A) of the Inshore Fishing (Scotland) Act 1984 |
| The Sea Fishing (Northern Hake Stock) (Scotland) Order 2006 (g) | Articles 3, 4, 5, 6(2) and (3), 7(1) and (3) and 8 |
| The Sea Fishing (Prohibition on the Removal of Shark Fins) (Scotland) Order 2007 (h) | Article 3 |
| The Inshore Fishing (Prohibited Methods of Fishing) (Loch Creran) Order 2007 (i) | Articles 3, 4 and 5, as read with section 4(1) and (1A) of the Inshore Fishing (Scotland) Act 1984 |
| The Inshore Fishing (Prohibited Methods of Fishing) (Firth of Lorn) (No. 2) Order 2007 (j) | Article 3(1), as read with section 4(1) and (1A) of the Inshore Fishing (Scotland) Act 1984 |
| The Sea Fishing (Control Procedures for Herring, Mackerel and Horse Mackerel) (Scotland) Order 2008 (k) | Articles 3(5), (6) and (7), 4(4), 6(4) and 7(2) |

(a) S.S.I. 2004/498.

(b) S.S.I. 2005/286; regulations 4 and 8 (and 12(2)(a)) were amended by S.S.I. 2005/438, regulation 2.

(c) S.S.I. 2005/304.

(d) S.S.I. 2005/330.

(e) S.S.I. 2006/284.

(f) S.S.I. 2006/487.

(g) S.S.I. 2006/505.

(h) S.S.I. 2007/39; articles 2(1) and 3 and Schedule 1 (referred to in article 3) were amended by S.S.I. 2009/413, article 2.

(i) S.S.I. 2007/185.

(j) S.S.I. 2007/240.

(k) S.S.I. 2008/102; article 7 was substituted (and the Schedule was amended) by S.S.I. 2008/156, article 2.

| <i>Enactment</i> | <i>Offence provision</i> |
|---------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| The Inshore Fishing (Prohibition on Fishing) (Lamlash Bay) (Scotland) Order 2008(a) | Article 2(1), as read with section 4(1) and (1A) of the Inshore Fishing (Scotland) Act 1984 |
| The Inshore Fishing (Prohibition of Fishing for Cockles) (Western Isles) (Scotland) Order 2009(b) | Article 2(1), as read with section 4(1) and (1A) of the Inshore Fishing (Scotland) Act 1984 |
| The Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2010(c) | Article 3(1), as read with section 5(1), (6) and (7) of the Sea Fish (Conservation) Act 1967 |
| The Sea Fishing (Transitional EU Technical Conservation Measures) (Scotland) Order 2010(d) | Article 3(1) |
| The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2010(e) | Articles 4(1) and 5(1), (2) and (4) |
| The Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Order 2010(f) | Articles 4(4) and (5), 5(1) and (2) and 6(1) and (5) |

PART 2

Enactments under or by virtue of which relevant offences are created, proceedings in respect of which may be taken in Scotland by virtue of section 30(2A) of the Fisheries Act 1981

| <i>Enactment</i> | <i>Offence Provision</i> |
|------------------------------------------------------------------------------------------------------------------|--------------------------|
| The Sea Fishing (Enforcement of Community Licensing Measures) (North of Scotland Box) Order 1984(g) | Article 3 |
| The Fishing Boats (Marking and Documentation) (Enforcement) Order 1993(h) | Article 3 |
| The Sea Fishing (Enforcement of Community Control Measures) Order 2000(i) | Article 3(1) and (2) |
| The Sea Fishing (Enforcement of Measures for the Recovery of the Stock of Cod) (Irish Sea) (Wales) Order 2000(j) | Article 3 |
| The Sea Fishing (Enforcement of Community Control Measures) (Wales) Order 2000(k) | Article 3(1) and (2) |
| The Sea Fishing (North-East Atlantic Control Measures) Order 2000(a) | Article 4 |

(a) S.S.I. 2008/317.

(b) S.S.I. 2009/444.

(c) S.S.I. 2010/9.

(d) S.S.I. 2010/100, amended by S.S.I. 2011/59.

(e) S.S.I. 2010/238, amended by S.S.I. 2011/59.

(f) S.S.I. 2010/334, amended by S.S.I. 2011/59.

(g) S.I. 1984/291; article 3 was amended by the Criminal Procedure (Scotland) Act 1975, section 289 GD.

(h) S.I. 1993/2015.

(i) S.I. 2000/51, amended by S.I. 2003/229, 2003/1535, 2004/38, 2004/398, 2005/393, 2005/617, 2005/2624 and 2009/1847. Article 3 was amended by S.I. 2004/398, article 23(b), S.I. 2005/393, article 32(b) and S.I. 2009/1847, article 2(4).

(j) S.I. 2000/976, amended by S.I. 2005/617 and 2010/630.

(k) S.I. 2000/1075, amended by S.I. 2003/559 and 2005/617.

| <i>Enactment</i> | <i>Offence Provision</i> |
|----------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| The Sea Fishing (Enforcement of Community Conservation Measures) (Wales) Order 2000 (b) | Article 3(1) and (2) |
| The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) Order 2004 (c) | Articles 5, 6, 7, 8(1), (2) and (4), 9(1) and (2), 11, 12, 13 and 14(1) and (2) |
| The Incidental Catches of Cetaceans in Fisheries (England) Order 2005 (d) | Article 4 |
| The Sea Fishing (Marking and Identification of Passive Fishing Gear and Beam Trawls) (England) Order 2006 (e) | Article 4 |
| The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Wales) Order 2006 (f) | Articles 5, 6, 7, 8(1), (2) and (4), 9(1) and (2), 11, 12, 13 and 14(1) and (2) |
| The Sea Fishing (Recovery Measures) Order 2008 (g) | Articles 4, 5, 6(1), (2) and (3), 7, 8(1) and (2), 9 and 10(1)” |

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- (a)** S.I. 2000/1843, amended by S.I. 2005/617.
(b) S.I. 2000/2230 (W.148), amended by S.I. 2005/617 and 2010/630.
(c) S.I. 2004/3226, amended by S.I. 2005/617.
(d) S.I. 2005/17, amended by S.I. 2005/617.
(e) S.I. 2006/1549.
(f) S.I. 2006/2798 (W.237).
(g) S.I. 2008/2347.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Order 2008 (“the principal Order”).

The principal Order provides for the offer and payment of a fixed penalty (as an alternative to prosecution) in relation to certain sea fisheries offences for the purposes of sections 25 to 31 of the Aquaculture and Fisheries (Scotland) Act 2007 (“the 2007 Act”).

This Order amends the principal Order so as to—

- (a) update the address at which a fixed penalty is payable in accordance with article 5 of the principal Order (article 3);
- (b) update the details of the person to whom, and the address to which, intimation of non payment of a fixed penalty is to be sent in accordance with article 6 of the principal Order (article 4); and
- (c) substitute Schedule 1 to (as read with article 2 of) the principal Order, which lists the relevant offences for which a fixed penalty notice may be issued in accordance with section 25(1) of the 2007 Act (article 5 and the Schedule). The replacement Schedule 1 updates that list of relevant offences by: re-specifying some of the offence provisions cited as relevant offences; omitting those that are no longer in force, and specifying additional relevant offences for the purpose of section 25(1) of the 2007 Act.

This Order revokes the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures and Restriction on Days at Sea) (Scotland) Order 2008 (“the 2008 Order”) to the extent that it has not already been revoked by the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures and Restriction on Days at Sea) (Scotland) Order 2009 (article 6). Article 34 of the 2008 Order amended Schedule 1 to the principal Order. The amendments in this Order supersede those amendments.

No Business and Regulatory Impact Assessment has been prepared for this instrument as it has no impact on the cost of business.

SCOTTISH STATUTORY INSTRUMENTS

2011 No. 70

SEA FISHERIES

**The Sea Fishing (Licences and Notices) (Scotland)
Regulations 2011**

Made - - - - *9th February 2011*

Laid before the Scottish Parliament *11th February 2011*

Coming into force - - *1st April 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 4B of the Sea Fish (Conservation) Act 1967(a) and all other powers enabling them to do so.

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Sea Fishing (Licences and Notices) (Scotland) Regulations 2011 and come into force on 1st April 2011.

(2) These Regulations extend to Scotland and the Scottish zone only and, insofar as they extend beyond Scotland and the Scottish zone, they do so only as a matter of Scots law.

(3) These Regulations apply to Scottish fishing boats wherever they may be.

Interpretation

2. In these Regulations—

“electronic communication” includes facsimile transmission and any method of transferring data by computer;

“licence” means a licence granted by the Scottish Ministers under either section 4 (licensing of fishing boats) or section 4A (licensing of vessels receiving trans-shipped fish) of the Sea Fish (Conservation) Act 1967(b) and includes a licence which contains a notice;

(a) 1967 c.84 (“the 1967 Act”). Section 4B was inserted by section 4 of the Sea Fish (Conservation) Act 1992 (c.60). Section 22(2)(a) of the 1967 Act, which contains a definition of “the Ministers” for the purposes of section 4B was amended by the Fisheries Act 1981 (c.29), sections 19(2)(d) and 45(b). The definition was modified in relation to Scotland by section 22A(12)(b) of the 1967 Act, as inserted by S.I. 1999/1820, Schedule 2, paragraph 43(13). The functions of the Secretary of State, in or as regards Scotland, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) Section 4 was substituted by the Fishery Limits Act 1976 (c.86), section 3 and amended by the Fisheries Act 1981 (c.29) (“the 1981 Act”), section 20; the Sea Fish (Conservation) Act 1992 (c.60) (“the 1992 Act”), section 1; the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 43; and the Aquaculture and Fisheries (Scotland) Act 2007 (asp 12), Schedule 1, paragraph 3(a). At the date of making these Regulations, section 4 is to be modified by the Marine (Scotland) Act 2010 (asp 5), section 158(1), which applies the modification introduced by section 197 of the Marine and Coastal Access Act 2009 (c.23) – see the Marine (Scotland) Act 2010 (Commencement No. 2 and Transitional Provisions) Order 2011 (S.S.I. 2011/58) (c.8), article 2 which is to come into force on 24th February 2011. Those modifications are not relevant to these Regulations. Section 4A was inserted by the 1981 Act, section 21 and amended by the 1992 Act, section 3; S.I. 1999/1820, Schedule 2, paragraph 43; and by the Marine and Coastal Access Act 2009 (c.23), section 6(9) as read with section 323.

“newspaper” means such newspaper circulating within, or within any part of, Scotland which the Scottish Ministers think appropriate;

“nominee” means either—

- (a) an individual resident in Scotland; or
- (b) a body incorporated in a member State and having a place of business in Scotland, appointed by the master, owner or charterer of a Scottish fishing boat to receive, on any such person’s behalf, licences and notices communicated in accordance with these Regulations;

“notice” means any notice of variation, suspension or revocation of a licence, whether that licence was granted before or after the coming into force of these Regulations;

“Scottish fishing boat” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995^(a) and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging, and in respect of which the Scottish Ministers may grant or have granted a licence; and

“sea fishing licence” means a licence granted by the Scottish Ministers under section 4 of the Sea Fish (Conservation) Act 1967.

Communication of licences and notices

3.—(1) A licence is to be granted by the Scottish Ministers to the master, owner or charterer of a Scottish fishing boat by communicating it to that master, owner or charterer or a nominee (as the case may be)—

- (a) by delivering it personally to the master, owner, charterer or nominee;
- (b) by sending it to the master, owner, charterer or nominee by post at the address or place of business of any such person;
- (c) by leaving it at the address or place of business of the master, owner or charterer, or in the hands of any person there; or
- (d) by transmitting it to the master, owner or charterer by electronic communication.

(2) A notice is to be effected by—

- (a) communicating it to a nominee, in a manner specified in paragraph (1)(a) or (b);
- (b) communicating it to the master, owner or charterer of the Scottish fishing boat—
 - (i) by delivering it personally to the master, owner or charterer; or
 - (ii) by transmitting it to the master, owner or charterer by electronic communication; or
- (c) publishing it—
 - (i) in a newspaper; or
 - (ii) on a website^(b), the address of which is indicated on the sea fishing licence to which the notice relates.

(3) Where a notice effected by publication in accordance with paragraph (2)(c) is a notice to which paragraph (5) applies, it must either—

- (a) provide that it applies to all sea fishing licences; or
- (b) specify those sea fishing licences to which it relates by reference to species, area or method or any combination thereof,

but it will not require to specify the name or port letters and number, or the name of any master, owner or charterer or nominee (as the case may be), of any Scottish fishing boat.

^(a) 1995 c.21.

^(b) As of the date of making of these Regulations, the address of the website for the purposes of regulation 3(2)(c)(ii) is <http://www.scotland.gsi.gov.uk/Topics/marine/Sea-Fisheries/17681/licencevariations>. Any alteration to that address will be notified to the sea fishing licence holder or any nominee, as the case may be.

(4) Where a notice effected by publication in accordance with paragraph (2)(c) is not a notice to which paragraph (5) applies, it must specify the sea fishing licences to which it relates by reference to the name or port letters and number of any Scottish fishing boat in respect of which those licences were granted.

(5) This paragraph applies to a notice which varies, suspends or revokes—

- (a) all sea fishing licences; or
- (b) all sea fishing licences authorising fishing—
 - (i) for one or more specified description of sea fish;
 - (ii) in one or more specified areas;
 - (iii) by a specified method or methods; or
 - (iv) by reference to a combination of two or more of the matters referred to in heads (i) to (iii).

Delivery of licences and giving of notices

4.—(1) A licence or a notice communicated personally is to be treated as delivered or given immediately it is communicated.

(2) Subject to paragraph (5), a licence or a notice communicated by post is to be treated as delivered or given 48 hours after the end of the day on which it was posted.

(3) A licence or a notice communicated by leaving it at a nominee's address or place of business or in the hands of a person there, or by transmission by electronic communication, is to be treated as delivered or given 24 hours after the time of leaving or transmitting.

(4) A notice effected by publication in accordance with regulation 3(2)(c) is—

- (a) where it is published in a newspaper, to be treated as given at the end of the day on which it is published;
- (b) where it is published on a website, to be treated as given immediately it is published.

(5) Where a licence or a notice—

- (a) is communicated by post; and
- (b) is to be treated as delivered or given, in accordance with this regulation—
 - (i) on a Sunday;
 - (ii) on a bank holiday within the meaning of the Banking and Financial Dealings Act 1971(a); or
 - (iii) on a local holiday,

the licence or notice is to be treated as delivered or given at the end of the next day following which is not a bank holiday or a local holiday.

Time at which licences and notices have effect

5. Subject to regulation 6—

- (a) a licence communicated in accordance with regulation 3(1), and a notice communicated in accordance with regulation 3(2)(b), has effect at the time it is treated as delivered or given in accordance with regulation 4;
- (b) a notice communicated in accordance with regulation 3(2)(a) has effect 24 hours after the time it is treated as given in accordance with regulation 4;
- (c) a notice communicated in accordance with regulation 3(2)(c)(i) has effect 48 hours after the time it is treated as given in accordance with regulation 4; and

(a) 1971 c.80, as relevantly amended by the St Andrew's Day Bank Holiday (Scotland) Act 2007 (asp 2), section 1.

- (d) a notice which is effected by publication in accordance with regulation 3(2)(c)(ii) has effect 24 hours after midnight on the day upon which the notice is treated as given under regulation 4(4)(b).

Special provision for certain licences and notices

6.—(1) A licence or a notice communicated by more than one of the methods specified in regulation 3 has effect at the earliest of the times corresponding to each such method specified in regulation 5.

(2) A licence or a notice, which purports on its face to have effect at a time later than that at which it is treated as having effect in accordance with regulation 5, has effect at the time shown on its face.

Revocation of the Sea Fishing (Licences and Notices) (Scotland) Regulations 1994

7. The Sea Fishing (Licences and Notices) Regulations 1994(**a**) are revoked.

Transitional provision

8. Notwithstanding the revocation of the Sea Fishing (Licences and Notices) Regulations 1994 under regulation 7, any licence granted or notice effected under those Regulations continues to have effect for the purposes of any investigation or legal proceedings relating to any acts or omissions which occurred before 1st April 2011 and which constitute an offence under the Sea Fish (Conservation) Act 1967(**b**).

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew's House,
Edinburgh
9th February 2011

(a) S.I. 1994/2813.
(b) 1967 c.84.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in accordance with section 4B of the Sea Fish (Conservation) Act 1967 (c.84) (“the 1967 Act”) for the manner in which a sea fishing licence under section 4 of that Act or a licence to receive trans-shipped fish under section 4A of that Act may be granted and in which a notice of variation, revocation or suspension of any such licence may be effected in accordance with section 4(9) or 4A(10), respectively, of the 1967 Act. The Regulations extend to Scotland and the Scottish zone and apply to Scottish fishing boats wherever they may be (regulation 1(3)).

Regulation 3(1) provides for the granting of a licence by the Scottish Ministers to the master, owner or charterer of a Scottish fishing boat by communicating it, by a method specified, to that person or to a person nominated by the master, owner or charterer to receive it (“a nominee”). Regulation 3(2) provides for the effecting of a notice by communicating it to a nominee or to the master, owner or charterer of the Scottish fishing boat. Regulation 3(3) to (5) provides for the effecting of notices of variation, suspension or revocation of all sea fishing licences or all sea fishing licences of a particular type granted by the Scottish Ministers by publishing a notice in a newspaper or on the Scottish Government website (<http://www.scotland.gsi.gov.uk/Topics/marine/Sea-Fisheries/17681/licencevariations>).

Regulation 4 specifies the time at which a licence or notice communicated in accordance with regulation 3 will be treated as having been delivered or given, according to the method of communication adopted.

Regulation 5 specifies the time at which a licence or notice treated as delivered or given in accordance with regulation 4 will have effect, according to the method of communication adopted.

Regulation 6 makes provision for the time at which a licence or a notice will take effect where—

- (a) more than one method of communicating it is employed; and
- (b) the licence or notice states that it will take effect later than provided for under regulation 5.

Regulation 7 revokes the Sea Fishing (Licences and Notices) Regulations 1994 (S.I. 1994/2813) insofar as they extend to Scotland, and regulation 8 contains a transitional provision in consequence of that revocation.

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from Marine Scotland, Victoria Quay, Leith, Edinburgh EH6 6QQ.

SCOTTISH STATUTORY INSTRUMENTS

2011 No. 73

AGRICULTURE

**The Less Favoured Area Support Scheme (Scotland)
Amendment Regulations 2011**

Made - - - - *9th February 2011*

Laid before the Scottish Parliament *11th February 2011*

Coming into force - - *14th March 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2011 and come into force on 14th March 2011.

Amendment of the Less Favoured Area Support Scheme (Scotland) Regulations 2010

2. The Less Favoured Area Support Scheme (Scotland) Regulations 2010(b) are amended in accordance with regulations 3 to 12.

Amendment of regulation 2

3. In regulation 2(1) (interpretation)—

(a) omit the definition of “Commission Regulation 1975/2006”;

(b) after the definition of “Commission Regulation 1122/2009” insert—

““Commission Regulation 65/2011” means Commission Regulation (EU) No. 65/2011 laying down detailed rules for the implementation of Council Regulation (EC) No. 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures(c);” and

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) S.S.I. 2010/273.

(c) O.J. L 25, 28.1.11, p.8.

- (c) for the definition of “minimum stocking density” substitute—
““minimum stocking density” has the meaning given in regulation 9(1A), (1B) and (1C) and Part III of Schedule 4;”.

Amendment of regulation 5

4. For regulation 5(1) (eligible land) substitute—

“(1) Eligible land comprises the number of hectares of forage area in a less favoured area, as declared by the applicant in a single application in respect of the Scheme Year to which payment relates, with—

- (a) a less favoured area grazing category—
 - (i) attributed to it by the Scottish Ministers prior to 1st January 2007; or
 - (ii) if no grazing category was attributed by the Scottish Ministers prior to 1st January 2007, a grazing category attributed by the Scottish Ministers by reference to the stocking density calculated in accordance with regulation 9(4) and Parts I and II of Schedule 4; and
- (b) one of the land use codes specified in column 2 of Schedule 2 corresponding to the entry in column 1 of Schedule 2 relating to the use of land.”.

Amendment of regulation 8

5. In regulation 8(4) (determination of unadjusted payable area), insert at the end—

“; or

- (c) where no stocking density was determined for a field or shared grazing under regulation 9 of the 2003 Regulations or under regulation 9(5) of the 2005 Regulations, the stocking density figure determined for the applicant in accordance with regulation 9(4) and Parts I and II of Schedule 4”.

Amendment of regulation 9

6. In regulation 9 (stocking density outwith the minimum and maximum stocking density parameters)—

- (a) after paragraph (1) insert—

“(1A) Subject to paragraphs (1B) and (1C), the minimum stocking density is the entry in the second column in Part III of Schedule 4 corresponding to the grazing category in the first column of that Part of that Schedule.

(1B) Where an applicant has eligible land which comprises land falling into more than one grazing category (as determined for the purposes of regulation 8), the minimum stocking density is the sum (to two decimal places) of the minimum stocking densities for each grazing category calculated in accordance with paragraph (1C).

(1C) The minimum stocking density for each grazing category is the proportion of the minimum stocking density (as set out in the second column in Part III of Schedule 4 corresponding to the grazing category in the first column of that Schedule) that the land in the grazing category represents in relation to the overall eligible land.”;

- (b) in paragraph (4), after “For the purpose of” insert “regulation 5(1)(a)(ii), regulation 8(4)(c) and”; and
- (c) in paragraph (8)(a), for “Commission Regulation 1975/2006” substitute “Commission Regulation 65/2011”.

Amendment of regulation 10

7. In regulation 10 (enterprise mix)—

- (a) in paragraph (1) for “Subject to paragraphs (2) and (3)” substitute “Subject to paragraphs (2), (3), (4) and (5)”;
- (b) for paragraph (3) substitute—

“(3) Where the hectare multiplier contained in the second column of Schedule 8 to be used for the purposes of the formula in paragraph (1) is, in the opinion of the applicant, unrepresentative of the usual enterprise mix of the applicant, as a result of the culling of cattle on the land in question in the context of the control of an outbreak of an epizootic disease—

- (a) during 2009; or
- (b) where the applicant did not submit a single application or claim less favoured area support in or prior to 2009, the first year of application,

the applicant may request that the Scottish Ministers determine that either of the hectare multipliers contained in the second column of Schedule 8 be used for the purposes of the formula in paragraph (1).”; and

- (c) after paragraph (3) insert—

“(4) Where less than 10% of the livestock units of the applicant calculated in accordance with regulation 9(4) and Parts I and II of Schedule 4 are cattle but that is, in the opinion of the applicant, the result of the culling of cattle on the land in question in the context of the control of an outbreak of epizootic disease—

- (a) during 2009; or
- (b) where the applicant did not submit a single application or claim less favoured area support in or prior to 2009, the first year of application,

the applicant may request that the Scottish Ministers treat the application as if paragraph (1) applied.

- (5) Following a request made under paragraph (4), the Scottish Ministers may—

- (a) treat the application as if paragraph (1) applied; and
- (b) determine that either of the hectare multipliers contained in the second column of Schedule 8 be used for the purposes of the formula in paragraph (1).”.

Amendment of regulation 12

8. For regulation 12 (minimum payment) substitute—

“Minimum payment

12. The minimum amount of less favoured area support payable by the Scottish Ministers under these Regulations (prior to the deduction of any penalty under Commission Regulation 65/2011) is £385 in respect of a Scheme Year.”.

Amendment of regulation 13

9. In regulation 13(1)(a) (powers of authorised persons), for “Articles 11, 12 and 20 of Commission Regulation 1975/2006”, substitute “Articles 11, 12 and 20 of Commission Regulation 65/2011”.

Amendment of Schedule 2

10. In Schedule 2 (land use codes eligible for less favoured area support scheme) insert at the end of the table—

| | |
|-------------------------------|-------|
| “Arable silage for stock feed | ASSF” |
|-------------------------------|-------|

Amendment of Schedule 4

11. In Schedule 4 (livestock units and stocking density)—

- (a) in the heading, for “Regulations 9(1)”, substitute “Regulations 2(1), 9(1), 9(1A), 9(1C)”; and
- (b) after Part II (calculation of stocking density) insert—

“PART III

MINIMUM STOCKING DENSITY

| Grazing Category | Minimum stocking density per hectare |
|------------------|--------------------------------------|
| A | 0.09 Livestock units |
| B | 0.15 Livestock units |
| C | 0.30 Livestock units |
| D | 0.45 Livestock units” |

Amendment of Schedule 5

12. In Schedule 5 (rates of payment for less favoured area support), for Parts I and II substitute—

“PART I

MORE DISADVANTAGED LAND

| <i>FRAGILITY CATEGORY</i> | <i>RATE</i> |
|-------------------------------|----------------------------------------------------------------------|
| | <i>Scheme 2011 payment, Scheme 2012 payment, Scheme 2013 payment</i> |
| <i>Very Fragile (Islands)</i> | £71.35 |
| <i>Fragile (Mainland)</i> | £62.10 |
| <i>Standard</i> | £52.16 |

PART II
LESS DISADVANTAGED LAND

| <i>FRAGILITY CATEGORY</i> | <i>RATE</i> |
|-------------------------------|----------------------------------------------------------------------|
| | <i>Scheme 2011 payment, Scheme 2012 payment, Scheme 2013 payment</i> |
| <i>Very Fragile (Islands)</i> | £63.00 |
| <i>Fragile (Mainland)</i> | £54.51 |
| <i>Standard</i> | £34.12” |

St Andrew's House,
Edinburgh
9th February 2011

RICHARD LOCHHEAD
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Less Favoured Area Support Scheme (Scotland) Regulations 2010 (“the 2010 Regulations”). The 2010 Regulations make provision for the purposes of the implementation of Council Regulation (EC) No. 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (O.J. L 277, 21.10.2005, p.1), Commission Regulation (EC) No. 1974/2006 (O.J. L 368, 23.12.2006, p.15) and Commission Regulation (EU) 65/2011 (O.J. L 25, 28.1.2011, p.8), both laying down detailed rules for the application of Council Regulation 1698/2005.

Regulation 3 amends regulation 2 of the 2010 Regulations to insert a new definition of “minimum stocking density”, by reference to the new regulation 9(1A), (1B) and (1C) of, and Part III of Schedule 4 to, the 2010 Regulations as inserted by regulations 6 and 11 of these Regulations. From 2011 the minimum stocking density will depend on the relevant grazing category applicable to land eligible for payment or less favoured area support.

Regulation 3 also amends the 2010 Regulations by inserting a definition of Commission Regulation 65/2011 which repealed Commission Regulation 1975/2006 (O.J. L 368, 23.12.2006, p.74). Regulations 6(c), 8 and 9 amend the 2010 Regulations to take account of the provisions of Commission Regulation 65/2011.

Regulation 4 amends regulation 5 of the 2010 Regulations to allow further areas of less favoured area land to be eligible for less favoured area support for the Scheme Years 2011-2013. The new regulation 5(1)(a)(ii) allows less favoured area land which has not previously been allocated a grazing category to be eligible for those Scheme Years in addition to previously eligible land. A grazing category is to be allocated by the Scottish Ministers having regard to the stocking density calculated in accordance with regulation 9(4) of, and Parts I and II of Schedule 4 to, the 2010 Regulations.

Regulation 5 makes a change consequential on the changes made by regulation 4 by allowing a hectare value to be calculated (on the basis of grazing category) for the further areas of land being brought into the Scheme.

Regulation 7 amends regulation 10 of the 2010 Regulations to substitute a new paragraph (3), to insert new paragraphs (4) and (5) and consequentially amend paragraph (1) in order to clarify the drafting.

Regulation 10 amends Schedule 2 to the 2010 Regulations to insert a new land use code for arable silage for stock feed (ASSF) for the purpose of the definition of “eligible land” in regulation 5(1) of the 2010 Regulations.

Regulation 12 (which substitutes Parts I and II of Schedule 5 to the 2010 Regulations) specifies new rates of payment for less favoured area support in accordance with regulations 7 and 11 of the 2010 Regulations.

No Business and Regulatory Impact Assessment has been prepared for this instrument as it has no impact on the cost of business.

SCOTTISH STATUTORY INSTRUMENTS

2011 No. 78

ENVIRONMENTAL PROTECTION

LICENSING (MARINE)

The Marine Licensing (Fees) (Scotland) Regulations 2011

Made - - - - - *10th February 2011*

Laid before the Scottish Parliament *14th February 2011*

Coming into force - - - *6th April 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 67(2) and (3)(b) and 316(1)(b) of the Marine and Coastal Access Act 2009^(a) and sections 25(1)(b) and (2) and 165(1)(b) of the Marine (Scotland) Act 2010^(b) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Marine Licensing (Fees) (Scotland) Regulations 2011 and come into force on 6th April 2011.

(2) In these Regulations—

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“the 2010 Act” means the Marine (Scotland) Act 2010;

“application” means an application for a marine licence made under section 67 of the 2009 Act or under section 25 of the 2010 Act;

“capital dredging” means dredging which is carried out—

(a) otherwise than in connection with maintenance works; and

(b) in an area or down to a level not previously dredged during the preceding 7 years;

“renewable energy structure” means a structure in the Scottish marine area (within the meaning of section 1 of the 2010 Act) or in the Scottish offshore region (within the meaning of section 322(1) of the 2009 Act) constructed for the purposes of generating electricity.

Determination of fees

2. The fee to accompany an application is to be determined—

(a) in accordance with regulations 3 to 5 in the case of an application made before 1st April 2012;

(b) in accordance with regulation 6 in the case of an application made on or after that date.

^(a) 2009 c.23.

^(b) 2010 asp 5.

Applications - general

3.—(1) This regulation applies to any application, other than one to which regulation 4 or 5 applies.

(2) Where in the opinion of the Scottish Ministers the activity for which a licence is sought forms part of a larger project, the fee is to be determined by reference to what the Scottish Ministers consider to be the likely cost of carrying out that project.

(3) Where the activity for which a licence is sought does not fall within paragraph (2), the fee is to be determined by reference to what the Scottish Ministers consider to be the likely cost of carrying out that activity.

(4) Where the likely cost of carrying out a project or activity (as the case may be)—

- (a) is no greater than £2,500, the fee is £50;
- (b) is greater than £2,500 but no greater than £5,000, the fee is £150;
- (c) is greater than £5,000 but no greater than £50,000, the fee is £600;
- (d) is greater than £50,000 but no greater than £2 million, the fee is £2,000;
- (e) is greater than £2 million but no greater than £5 million, the fee is £4,000;
- (f) is greater than £5 million but no greater than £20 million, the fee is £12,000;
- (g) is greater than £20 million but no greater than £50 million, the fee is £20,000;
- (h) is greater than £50 million, the fee is £30,000.

Applications – maintenance dredging

4.—(1) This regulation applies to an application for a licence in respect of the disposal of materials dredged from the seabed in connection with maintenance works.

(2) Where the application seeks a licence to dispose of no more than 10,000 tons over a period—

- (a) of no more than 1 year, the fee is £1,400;
- (b) of more than 1 year but no more than 2 years, the fee is £2,450;
- (c) of more than 2 years but no more than 3 years, the fee is £3,500.

(3) Where the application seeks a licence to dispose of more than 10,000 tons but no more than 100,000 tons over a period—

- (a) of no more than 1 year, the fee is £2,800;
- (b) of more than 1 year but no more than 2 years, the fee is £4,900;
- (c) of more than 2 years but no more than 3 years, the fee is £7,000.

(4) Where the application seeks a licence to dispose of more than 100,000 tons but no more than 300,000 tons over a period—

- (a) of no more than 1 year, the fee is £5,600;
- (b) of more than 1 year but no more than 2 years, the fee is £9,800;
- (c) of more than 2 years but no more than 3 years, the fee is £14,000.

(5) Where the application seeks a licence to dispose of more than 300,000 tons over a period—

- (a) of no more than 1 year, the fee is £9,400;
- (b) of more than 1 year but no more than 2 years, the fee is £16,450;
- (c) of more than 2 years but no more than 3 years, the fee is £23,500.

Applications – capital dredging

5.—(1) This regulation applies to an application for a licence in respect of the disposal of materials dredged from the seabed in the course of capital dredging.

(2) Where the application seeks a licence to dispose of no more than 10,000 tons over a period—

- (a) of no more than 1 year, the fee is £1,7500;
- (b) of more than 1 year but no more than 2 years, the fee is £3,500;
- (c) of more than 2 years but no more than 3 years, the fee is £5,250.

(3) Where the application seeks a licence to dispose of more than 10,000 tons but no more than 100,000 tons over a period—

- (a) of no more than 1 year, the fee is £3,500;
- (b) of more than 1 year but no more than 2 years, the fee is £6,125;
- (c) of more than 2 years but no more than 3 years, the fee is £8,750.

(4) Where the application seeks a licence to dispose of more than 100,000 tons but no more than 300,000 tons over a period—

- (a) of no more than 1 year, the fee is £7,000;
- (b) of more than 1 year but no more than 2 years, the fee is £12,250;
- (c) of more than 2 years but no more than 3 years, the fee is £17,500.

(5) Where the application seeks a licence to dispose of more than 300,000 tons in connection with the construction of a renewable energy structure, the fee payable is £25,000.

(6) In a case not falling within paragraph (5), where the application seeks a licence to dispose of more than 300,000 tons over a period—

- (a) of no more than 1 year, the fee is £11,750;
- (b) of more than 1 year but no more than 2 years, the fee is £20,562;
- (c) of more than 2 years but no more than 3 years, the fee is £29,374.

Applications made on or after 1st April 2012

6.—(1) The fees payable in respect of applications are to be varied with effect from 1st April each year and the fee to accompany an application made on or after 1st April 2012 is to be determined in accordance with paragraph (2).

(2) The fee payable in respect of an application is to be determined in accordance with the formula—

$$A \times \frac{B}{C}$$

Where—

A is the amount that would have been payable had an application of the kind in question been made in the licensing year prior to the licensing year in which the application is made;

B is the Consumer Prices Index figure^(a) for February in the licensing year immediately before the licensing year in which the application is made; and

C is the Consumer Prices Index figure for February in the licensing year finishing a year before the start of the licensing year in which the application is made.

(3) In paragraph (2), “licensing year” means a period of 12 months starting on 1st April.

(a) Consumer Prices Index figures can be obtained from the website of the Office for National Statistics (www.ons.gov.uk).

Reduced fee

7.—(1) The Scottish Ministers may decide that a reduced fee is payable in respect of an application in the circumstances specified in paragraph (2).

(2) Those circumstances are where—

- (a) an application is made which is, in the opinion of the Scottish Ministers, substantially similar to an earlier application; and
- (b) that earlier application has been withdrawn or refused.

St Andrew's House,
Edinburgh
10th February 2011

RICHARD LOCHHEAD
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision as to the fees payable in respect of applications to the Scottish Ministers for a marine licence. They apply to applications under both the Marine and Coastal Access Act 2009 (Scottish offshore waters) and the Marine (Scotland) Act 2010 (Scottish inshore waters).

Regulation 3 makes provision as to fees for all applications, other than applications for the disposal of materials dredged from the seabed (which are dealt with in regulations 4 and 5). Regulation 6 provides for the annual revision of fees as at 1st April by reference to changes in Consumer Prices Index figures. Regulation 7 allows the Scottish Ministers to charge a reduced fee in respect of a resubmitted application.

SCOTTISH STATUTORY INSTRUMENTS

2011 No. 79

ENVIRONMENTAL PROTECTION

LICENSING (MARINE)

The Marine Licensing (Consultees) (Scotland) Order 2011

Made - - - - *10th February 2011*

Laid before the Scottish Parliament *14th February 2011*

Coming into force - - *6th April 2011*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 27(4)(a) and 165(1) of the Marine (Scotland) Act 2010^(a) and of all other powers enabling them to do so.

Citation and commencement

1. This Order may be cited as the Marine Licensing (Consultees) (Scotland) Order 2011 and comes into force on 6th April 2011.

Persons or bodies to be consulted

2. The following are specified as bodies who must be consulted in relation to each application for a marine licence:—

- (a) the Commissioners of Northern Lighthouses;
- (b) the Maritime and Coastguard Agency;
- (c) the Scottish Environment Protection Agency; and
- (d) Scottish Natural Heritage.

3.—(1) Any delegate for a region is specified as a person who must be consulted in relation to any application for a marine licence for an activity which is to be carried out in that region (wholly or partly).

(2) In paragraph (1), a “delegate” is a person to whom functions have been delegated by a direction given under section 12(1) of the Marine (Scotland) Act 2010.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew's House,
Edinburgh
10th February 2011

EXPLANATORY NOTE

(This note is not part of the Order)

Section 27(4) of the Marine (Scotland) Act 2010 provides that the Scottish Ministers must, in relation to each application for a marine licence under Part 4 of that Act, consult such persons or bodies as may be specified by order. This Order specifies persons and bodies for this purpose.

SCOTTISH STATUTORY INSTRUMENTS

2011 No. 80

ENVIRONMENTAL PROTECTION

LICENSING (MARINE)

**The Marine Licensing (Register of Licensing Information)
(Scotland) Regulations 2011**

Made - - - - *10th February 2011*

Laid before the Scottish Parliament *14th February 2011*

Coming into force - - *6th April 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 101 and 316(1) of the Marine and Coastal Access Act 2009^(a) and sections 54 and 165(1) of the Marine (Scotland) Act 2010^(b) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Marine Licensing (Register of Licensing Information) (Scotland) Regulations 2011 and come into force on 6th April 2011.

Interpretation

2.—(1) In these Regulations—

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“the 2010 Act” means the Marine (Scotland) Act 2010;

“application” means application for a licence, but does not include an application for a licence submitted and subsequently withdrawn;

“licence” means a marine licence granted under section 71(1) of the 2009 Act or section 29(1) of the 2010 Act;

“location” includes—

(a) the latitude and longitude; or

(b) the map co-ordinates on the National Grid used by the Ordnance Survey;

“the register” means the register of licensing information maintained by the Scottish Ministers in terms of regulation 3.

^(a) 2009 c.23; section 113(2) makes provision as to the activities as respects which the Scottish Ministers are “the appropriate licensing authority”.

^(b) 2010 asp 5.

(2) A reference in these Regulations to—

- (a) a particular numbered item “of the 2009 Act” is a reference to that numbered item in section 66(1) of the 2009 Act; and
- (b) a particular numbered item “of the 2010 Act” is a reference to that numbered item in section 21(1) of the 2010 Act.

Single register to be kept

3. The registers required to be maintained by the Scottish Ministers under section 101(1) of the 2009 Act and section 54(1) of the 2010 Act are to be maintained as a single register.

The register and prescribed particulars

4.—(1) The register may be kept in any form.

(2) The register must contain the particulars prescribed in these Regulations.

(3) Regulation 5 prescribes particulars relating to all applications and licences.

(4) Regulations 6 to 12 prescribe additional particulars relating to particular types of applications and licences.

(5) Regulations 13 and 14 prescribe particulars relating to variations, revocations, suspensions and transfers of licences.

(6) Regulations 15 to 17 prescribe particulars relating to convictions, other enforcement action and remedial action.

(7) The Scottish Ministers must include in the register the particulars prescribed by regulations 5 to 14 as soon as reasonably practicable after receiving or generating the information in question.

Any application and licence

5. The particulars relating to any application and any licence are—

- (a) the date the application was made;
- (b) the application reference number or licence number issued by the Scottish Ministers;
- (c) the application reference number or licence number of any other application or licence which the Scottish Ministers consider is related to the application or licence in question;
- (d) the name and address of the applicant or licence holder;
- (e) the name and address of any agent, contractor or sub-contractor proposed to be engaged in the activity to which the application or licence relates;
- (f) the dates of commencement and expiry of the licence (as sought, in the case of an application, and as granted, in the case of a licence);
- (g) the date the licence was granted;
- (h) details of any conditions subject to which the licence was granted;
- (i) details of any studies of the potential environmental and human health effects of the activity to be licensed supplied with the application;
- (j) details of any information supplied or articles produced, and the results of any investigation, examination or test carried out, under section 67(4) of the 2009 Act or under section 25(3) or (4) of the 2010 Act.

Deposit of substances or objects

6.—(1) This regulation applies in relation to applications and licences to carry on a licensable marine activity which falls within item 1, 2 or 3 of the 2009 Act or item 1 or 2 of the 2010 Act.

(2) The additional particulars are—

- (a) the description, composition and quantity of the substance or object to be deposited;
- (b) the name and description of any vehicle, vessel, aircraft, marine structure or floating container from which the deposit is to be made, and, in the case of any vessel, its registration number and country of registration;
- (c) the location at which the deposit is to be made;
- (d) where the activity falls within item 3 of the 2009 Act or item 2 of the 2010 Act, the location at which the loading is to take place;
- (e) in the case of a deposit for the purpose of disposal, details of any alternative methods of disposal considered by the applicant and the reason for seeking to deposit the substance or object in the sea.

Scuttling

7.—(1) This regulation applies in relation to applications and licences to carry on a licensable marine activity which falls within item 4, 5 or 6 of the 2009 Act or item 3 or 4 of the 2010 Act.

(2) The additional particulars are—

- (a) the intended date of the scuttling;
- (b) the name of the vessel or floating container to be scuttled and, in the case of any vessel, its registration number and country of registration;
- (c) the location at which the vessel or floating container is to be scuttled;
- (d) a description of any cargo of the vessel or floating container by reference to its composition and quantity.

Construction, alteration or improvement of works

8.—(1) This regulation applies in relation to applications and licences to carry on a licensable marine activity which falls within item 7 of the 2009 Act or item 5 of the 2010 Act.

(2) The additional particulars are—

- (a) a description of the works to be carried out, including dates;
- (b) the location at which the construction, alteration or improvement of works is to take place.

Use of vehicle etc to remove substances or objects from sea bed

9.—(1) This regulation applies in relation to applications and licences to carry on a licensable marine activity which falls within item 8 of the 2009 Act or item 6 of the 2010 Act.

(2) The additional particulars are—

- (a) a description of the substance or object to be removed from the sea bed;
- (b) the name and description of any vehicle, vessel, aircraft, marine structure or floating container intended to be used to remove the substance or object from the sea bed, and, in the case of any vessel, its registration number and country of registration;
- (c) the location from which the object or substance is to be removed;
- (d) details of any alternative methods of removal considered by the applicant and the reason for seeking to remove the substance or object from the sea bed.

Dredging

10.—(1) This regulation applies in relation to applications and licences to carry on a licensable marine activity which falls within item 9 of the 2009 Act or item 7 of the 2010 Act.

(2) The additional particulars are—

- (a) details of the type of dredging to be carried out;
- (b) the location at which the dredging is to be carried out;
- (c) any information held by the Scottish Ministers as to the contamination of the material to be dredged.

Deposit or use of explosives

11.—(1) This regulation applies in relation to applications and licences to carry on a licensable marine activity which falls within item 10 of the 2009 Act or item 8 of the 2010 Act.

(2) The additional particulars are—

- (a) the location at which the explosive substance or article is to be deposited or used;
- (b) a description, including its quantity, of that explosive substance or article;
- (c) details of the purpose of the deposit or use of that explosive substance or article.

Incineration or loading vehicle etc. for incineration

12.—(1) This regulation applies in relation to applications and licences to carry on a licensable marine activity which falls within item 11, 12 or 13 of the 2009 Act or item 9 or 10 of the 2010 Act.

(2) The additional particulars are—

- (a) a description of the substance or object to be incinerated, together with its composition and quantity;
- (b) the name and description of any vehicle, vessel, aircraft, marine structure or floating container on which the incineration is to take place or which is to be loaded, and, in the case of any vessel, its registration number and country of registration;
- (c) the location at which the incineration is to take place;
- (d) where the activity falls within item 13 of the 2009 Act or item 10 of the 2010 Act, the location at which the loading is to take place;
- (e) details of any alternatives to incineration considered by the applicant and the reason for seeking to incinerate the substance or object.

Variation, revocation or suspension of licences

13. The particulars in relation to any variation, revocation or suspension of a licence are—

- (a) the licence number;
- (b) the date of the variation, revocation or suspension;
- (c) the reason for the variation, revocation or suspension;
- (d) in the case of a variation, details of the variation.

Transfer of licences

14. The particulars in relation to any transfer of a licence are—

- (a) the licence number;
- (b) the name and address of the person to whom the licence has been transferred;
- (c) the date of the transfer.

Convictions

15.—(1) The particulars in relation to any conviction for any offence under Part 4 of the 2009 Act or Part 4 of the 2010 Act are—

- (a) the statutory provision under which the person has been convicted;
- (b) the licence number (where applicable);
- (c) the name and address of the person convicted;
- (d) the date of the offence;
- (e) the court where the case was heard;
- (f) the date of conviction;
- (g) any penalty imposed by the court.

(2) In paragraph (1), “conviction” does not include a conviction that has been overturned on appeal.

Other enforcement action

16.—(1) The particulars in relation to any enforcement action taken in relation to Part 4 of the 2009 Act or Part 4 of the 2010 Act are—

- (a) the licence number (where applicable);
- (b) the name and address of the person against whom the enforcement action was taken;
- (c) the type of enforcement action taken;
- (d) the date of the offence or other activity in relation to which the enforcement action was taken;
- (e) the reason for the enforcement action.

(2) In paragraph (1), “enforcement action” means the issue of a compliance notice, remediation notice, stop notice, or emergency safety notice^(a), but does not include any such notice which has been overturned on appeal.

Remedial action

17. The particulars relating to any works carried out by the Scottish Ministers under section 106 of the 2009 Act or section 59 of the 2010 Act are—

- (a) the licence number (if applicable);
- (b) the date of the works;
- (c) the type of works undertaken;
- (d) the location at which the works were carried out;
- (e) the reason for the works.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
10th February 2011

(a) See section 115(1) of the 2009 Act and sections 43, 44, 55 and 57 of the 2010 Act as to the meaning of these terms.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 101 of the Marine and Coastal Access Act 2009 (“the 2009 Act”) and section 54 of the Marine (Scotland) Act 2010 (“the 2010 Act”) both require the Scottish Ministers to keep a register containing information pertaining to marine licensing under Part 4 of each Act. The Scottish Ministers have certain licensing functions in respect of offshore waters under the 2009 Act and in respect of inshore waters under the 2010 Act. These Regulations provide for the registers under the 2009 and 2010 Acts to be maintained as a single register (regulation 3) and prescribe the particulars to be included in the register.

Regulation 5 prescribes the particulars that must be included in the register relating to applications and licences. Regulations 6 to 12 prescribe additional particulars relating to certain types of applications and licences. Regulations 13 and 14 prescribe particulars relating to variations, revocations, suspensions and transfers of licences. Regulations 15 to 17 prescribe particulars relating to convictions, other enforcement action and remedial action.

SCOTTISH STATUTORY INSTRUMENTS

2011 No. 81

AGRICULTURE

**The Reporting of Prices of Milk Products (Scotland)
Amendment Regulations 2011**

Made - - - - *9th February 2011*

Laid before the Scottish Parliament *11th February 2011*

Coming into force - - *1st April 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in that section, and it appears to the Scottish Ministers that it is expedient for references in these Regulations, and in the Regulations which these Regulations amend, to Commission Regulation (EU) No 479/2010 laying down rules for the implementation of Council Regulation (EC) No 1234/2007 as regards Member States' notifications to the Commission in the milk and milk products sector(b) or to any provision of that instrument to be construed as a reference to that instrument or provision as amended from time to time.

Citation and commencement

1. These Regulations may be cited as the Reporting of Prices of Milk Products (Scotland) Amendment Regulations 2011 and come into force on 1st April 2011.

Amendment to the Reporting of Prices of Milk Products (Scotland) Regulations 2005

2.—(1) The Reporting of Prices of Milk Products (Scotland) Regulations 2005(c) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 2(1) (interpretation)—

(a) for the definition “Commission Regulation” substitute—

““Commission Regulation” means Commission Regulation (EU) No 479/2010 laying down rules for the implementation of Council Regulation (EC) No 1234/2007 as

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and was amended by Schedule, Part 1 of the 2008 Act.

(b) O.J. L 135, 2.6.10, p.26. This Regulation has been amended by Commission Regulation (EU) No 1041/2010 (O.J. L 299, 17.11.10, p.4).

(c) S.S.I. 2005/484.

- regards Member States' notifications to the Commission in the milk and milk products sector^(a), as amended from time to time;"; and
- (b) for the definition "milk products" substitute—
- "“milk products” means the products—
- (a) listed in Annexes I.A and I.B; and
- (b) referred to in Article 2(3)(a),
- of the Commission Regulation.”.
- (3) In regulation 3 (provision of information on prices of milk products)—
- (a) in paragraph (1)—
- (i) after “provide”, insert “to the Scottish Ministers”;
- (ii) omit “to such persons”; and
- (iii) for “Article 6” substitute “Articles 2 and 3”; and
- (b) in paragraph (2) for “requested on a weekly basis” substitute “at a frequency determined by the Commission Regulation”.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew's House,
Edinburgh
9th February 2011

(a) O.J. L 135, 2.6.10, p.26. This Regulation has been amended by Commission Regulation (EU) No 1041/2010 (O.J. L 299, 17.11.10, p.4).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Reporting of Prices of Milk Products (Scotland) Regulations 2005 (“the principal Regulations”). They make provision for the enforcement of Article 2 and Article 3 of Commission Regulation (EU) No 479/2010 laying down detailed rules for the implementation of Council Regulation (EC) No 1234/2007 as regards Member States’ notifications to the Commission in the milk and milk products sector.

Council Regulation (EC) No 1255/1999 on the common organisation of the market in milk and milk products (O.J. L 160, 26.6.99, p.48) was repealed by Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (O.J. L 299, 16.11.07, p.1)(a).

The principal Regulations implemented Article 6 of Commission Regulation (EC) No 562/2005 (O.J. L 95, 14.4.05, p.11) laying down rules for the implementation of Council Regulation (EC) No 1255/1999 as regards communications between Member States and the Commission in the milk and milk products sector. Commission Regulation (EC) No 562/2005 was repealed and replaced with amendments by said Commission Regulation (EU) No 479/2010. Those amendments concerned the milk products on which price reporting must take place, and the frequency at which those reports must be made.

Regulation 2(2) updates the references in the principal Regulations in light of changes to the EU law and includes the definition of raw milk in “milk products”. Regulation 2(3) also makes minor amendments to regulation 3 of the principal Regulations to ensure the information is given to Scottish Ministers and at a frequency determined by the Commission Regulation.

These Regulations replace the references in the principal Regulations to the repealed provisions of Commission Regulation (EC) No 562/2005 with the corresponding references to the provisions of Commission Regulation (EU) No 479/2010. These Regulations provide these are references to Commission Regulation (EU) No 479/2010 as amended from time to time. Any amendments to Commission Regulation (EU) No 479/2010 will be published on the Europa website, (http://europa.eu/documentation/legislation/index_en.htm). Additionally the Scottish Government will publish relevant information on the Scottish Government website (www.scotland.gov.uk) and updates will be sent to interested parties where considered appropriate.

A Business and Regulatory Impact Assessment has not been produced for this instrument as there will be no cost to business.

(a) This Regulation was last amended by Regulation (EU) No 1234/2010 (O.J. L 346, 30.12.10, p.11).

SCOTTISH STATUTORY INSTRUMENTS

2011 No. 82

AGRICULTURE

The Milk and Milk Products (Pupils in Educational Establishments) (Scotland) Amendment Regulations 2011

Made - - - - *9th February 2011*

Laid before the Scottish Parliament *11th February 2011*

Coming into force - - *1st April 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972^(a) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in that section and it appears to the Scottish Ministers that it is expedient for the references in these Regulations, and in the Regulations which these Regulations amend, to—

- (a) Article 102 of Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)^(b); and
- (b) Commission Regulation (EC) No 657/2008 laying down detailed rules for applying Council Regulation (EC) No 1234/2007 as regards Community aid for supplying milk and certain milk products to pupils in educational establishments^(c),

to be construed as references to that Article and that Commission Regulation as amended from time to time.

The Scottish Ministers have carried out consultation as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety^(d).

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- (a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and was amended by the 2008 Act, Schedule 1, Part 1.
- (b) O.J. L 299, 16.11.07, p.1; last amended by Regulation (EU) No 1234/2010 (O.J. L 346 30.12.10, p11).
- (c) O.J. L 183, 11.7.08, p.17; last amended by Commission Regulation (EC) No 966/2009 (O.J. L 271, 16.10.09, p10).
- (d) O.J. L 31, 1.2.02, p.1, to which there are no amendments relevant to Article 9.

Citation and commencement

1. These Regulations may be cited as the Milk and Milk Products (Pupils in Educational Establishments) (Scotland) Amendment Regulations 2011 and come into force on 1st April 2011.

Amendment of the Milk and Milk Products (Pupils in Educational Establishments) (Scotland) Regulations 2001

2. The Milk and Milk Products (Pupils in Educational Establishments) (Scotland) Regulations 2001(a) are amended in accordance with regulations 3 and 4.

3. In regulation 2 (interpretation) for the definition—

(a) “the Commission Regulation”, substitute—

““the Commission Regulation” means Commission Regulation (EC) No 657/2008 laying down detailed rules for applying Council Regulation (EC) No 1234/2007 as regards Community aid for supplying milk and certain milk products to pupils in educational establishments(b), as amended from time to time;”;

(b) “Community aid”, substitute—

““Community aid” means Community aid granted pursuant to Article 102(1) of the Council Regulation and in accordance with the Commission Regulation;”;

(c) “the Council Regulation”, substitute—

““the Council Regulation” means Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)(c), as amended from time to time.”.

4. In regulation 3 (additional payments under Article 14(2) of the Council Regulation)—

(a) in the cross heading and in paragraph (1) for “Article 14(2)”, substitute “Article 102(2)”; and

(b) for paragraph (2)(a) to (h) substitute—

“(a) Article 2 (beneficiaries);

(b) Article 3(1) and (4) (eligible products);

(c) Article 5(4), first sub-paragraph (milk and milk products used in preparation of meals not to benefit from aid);

(d) Article 8 (general conditions of approval), except for the words in paragraph (1)(b) following the reference to Article 2;

(e) Article 9 (specific conditions for the approval of certain applicants);

(f) Article 10 (suspension and withdrawal of approval);

(g) Article 11 (payment applications);

(h) Article 12 (payment of the aid);

(a) S.S.I. 2001/162.

(b) O.J. L 183, 11.7.08, p.17; last amended by Commission Regulation (EC) No. 966/2009 (O.J. L 271, 16.10.09, p.10).

(c) O.J. L 299, 16.11.07, p.1; last amended by Regulation (EU) No 1234/2010 (O.J. L 346, 30.12.10, p.11).

- (i) Article 14 (price monitoring); and
- (j) Article 15 (controls and sanctions),”.

St Andrew's House,
Edinburgh
9th February 2011

RICHARD LOCHHEAD
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Milk and Milk Products (Pupils in Educational Establishments) (Scotland) Regulations 2001 (“the principal Regulations”).

These Regulations update references in the principal Regulations in light of changes in EU law (regulations 3 and 4). Council Regulation (EC) No 1255/1999 (O.J. L 160, 26.6.99, p.48) and Commission Regulation (EC) No 2707/2000 (O.J. L 311, 12.12.00, p.37) were repealed and replaced by Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) and Commission Regulation (EC) No 657/2008 laying down detailed rules for applying Council Regulation 1234/2007 as regards aid for supplying milk and certain milk products to pupils in educational establishments (“the Commission Regulation”). The new EU law deals with the same subject matter as the EU law which it revoked and replaced i.e. the rules governing the provision of Community aid for milk and milk products in educational establishments.

These Regulations replace references in the principal Regulations with the corresponding references to the replacement provisions in the Single CMO Regulation and the Commission Regulation. There are no major changes as a result of the replaced provisions although there are some minor changes as follows—

- (a) secondary schools may now also be beneficiaries of aid (Article 2);
- (b) new provision on eligible milk products for aid (Article 3(1) and (4));
- (c) changes to general conditions for approval, in relation to written commitments on scrutiny of records and repayment of unduly paid aid (Article 8);
- (d) less stringent record keeping requirements for suppliers of milk products and organisations acting on behalf of schools (Article 9);
- (e) extended period after which approval for aid may be restored at an applicant’s request, if it has been withdrawn (Article 10);
- (f) payment applications must now be lodged by the end of the third, rather than fourth, month following the end of the period of the application (Article 11);
- (g) small changes in relation to the detailed rules for the payment of aid, including aid must now be paid within three, rather than four, months of a valid application being lodged (Article 12);
- (h) provision on administrative checking of aid applications has been introduced, including on the spot checks (Article 15);
- (i) the provision previously allowing Member States to pay advances of aid is no longer incorporated.

The amendments to regulation 3 of the principal Regulations ensure that any national aid payments under regulation 3 of the principal Regulations shall be subject to the same rules, requirements and conditions as apply to Community aid, which is paid under Article 102(1) of the Single CMO Regulation as implemented by the Commission Regulation.

These Regulations provide that references, in the principal Regulations, to Article 102 of the Single CMO Regulation and the Commission Regulation are to be construed as references to that Article and that Regulation as amended from time to time.

Any amendments to Article 102 and that Commission Regulation will be published on the Europa website, (http://europa.eu/documentation/legislation/index_en.htm). Additionally the Scottish Government will publish relevant information on the Scottish Government website (www.scotland.gov.uk) and updates will be sent to interested parties where considered appropriate.

A Business and Regulatory Impact Assessment has not been produced for this instrument, as there will be no cost to business.

SCOTTISH STATUTORY INSTRUMENTS

2011 No. 83

FOOD

**The Dairy Produce Quotas (Scotland) Amendment
Regulations 2011**

| | | |
|--------------------------------------------|---------|---------------------------|
| <i>Made</i> | - - - - | <i>9th February 2011</i> |
| <i>Laid before the Scottish Parliament</i> | | <i>11th February 2011</i> |
| <i>Coming into force</i> | - - | <i>1st April 2011</i> |

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972^(a) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in that section and it appears to the Scottish Ministers that it is expedient for the references in these Regulations, and in the Regulations which these Regulations amend, to—

- (a) (i) Article 55(1)(a);
 - (ii) Article 55(2), in so far as it relates to milk and other milk products; and
 - (iii) the provisions of, or referred to in, Section III of Chapter III of Part II, of Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)^(b); and
- (b) Commission Regulation (EC) No 595/2004 laying down detailed rules for applying Council Regulation (EC) No 1788/2003 establishing a levy in the milk and milk products sector^(c),

to be construed as references to those Articles and provisions and to that Commission Regulation as amended from time to time.

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), Schedule, Part 1. The function conferred upon the Minister of the Crown under section 2(2), in so far as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and amended by the 2008 Act, Schedule, Part 1.

(b) O.J. L 299, 16.11.07, p.1, as last amended by Regulation (EU) 1234/2010 (O.J. L 346, 30.12.10, p.11).

(c) O.J. L 94, 31.3.04, p.22, as last amended by Commission Regulation (EC) 793/2009 (O.J. L 228, 1.9.09, p.7). Although Council Regulation (EC) No 1788/2003 (O.J. L 270, 21.10.03, p.123) was repealed on 1st April 2008 by virtue of Article 201(1)(b) of Council Regulation (EC) No 1234/2007 (“the Single CMO Regulation”), the reference to Council Regulation (EC) No 1788/2003 is to be read as a reference to the Single CMO Regulation by virtue of Article 202 of the Single CMO Regulation.

Citation and commencement

1. These Regulations may be cited as the Dairy Produce Quotas (Scotland) Amendment Regulations 2011 and come into force on 1st April 2011.

Amendment of the Dairy Produce Quotas (Scotland) Regulations 2005

2. The Dairy Produce Quotas (Scotland) Regulations 2005(a) are amended in accordance with the Schedule.

Consequential amendments

3. In the Dairy Produce Quotas (Scotland) Amendment Regulations 2007(b), omit regulation 3.

4. In the Schedule to the Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations 2004(c), in the entry relating to “Milk Quotas Scheme” for “(EC) No 1788/2003 establishing a levy in the milk and milk products sector” substitute—

“Article 55(1)(a) and (2), in so far as it relates to milk and other milk products, and the provisions of, or referred to in, Section III of Chapter III of Part II of Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)(d), as amended from time to time”.

RICHARD LOCHHEAD

A member of the Scottish Executive

St Andrew’s House,
Edinburgh
9th February 2011

(a) S.S.I. 2005/91, as amended by S.S.I. 2006/119 and S.S.I. 2007/118.

(b) S.S.I. 2007/118.

(c) S.S.I. 2004/278.

(d) O.J. L 299, 16.11.07, p.1, as last amended by Regulation (EU) 1234/2010 (O.J. L 346, 30.12.10, p.11).

SCHEDULE

Regulation 2

Amendments to the Dairy Produce Quotas (Scotland) Regulations 2005

1. In regulation 2 (interpretation), for paragraph (1), substitute—

“(1) In these Regulations, unless the context otherwise requires—

“the Commission Regulation” means Commission Regulation (EC) No 595/2004 laying down detailed rules for applying Council Regulation (EC) No 1788/2003 establishing a levy in the milk and milk products sector(a);

“the Community legislation” means the Commission Regulation and—

(a) Article 55(1)(a);

(b) Article 55(2), in so far as it relates to milk and other milk products; and

(c) the provisions of, or referred to in, Section III of Chapter III of Part II, of the Council Regulation;

“competent authority” has the meaning given by regulation 2(1) of the General Provisions Regulations;

“consent or sole interest notice” means a notice, in relation to a holding, which states that—

(a) the person providing the notice is the occupier of that holding and that no other person has an interest in that holding or part of that holding; or

(b) every person having an interest in that holding or any part of it, the value of which interest might be reduced by the apportionment or prospective apportionment to which the notice relates, agrees to that apportionment or prospective apportionment;

“converted quota” means quota converted by the Scottish Ministers following an application made under regulation 21;

“the Council Regulation” means Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)(b);

“cow” includes a heifer that has calved;

“dairy enterprise” means an area stated by the occupier of that area to be run as a self-contained dairy produce business;

“dairy produce” means produce, expressed in kilograms or litres (one kilogram being 0.971 litres), in respect of which levy is payable;

“delivery” has the same meaning as in Article 65(f) of the Council Regulation, and “deliver” shall be construed accordingly;

“direct sale” has the same meaning as in Article 65(g) of the Council Regulation;

“direct sales quota” means the quantity of dairy produce which may be sold or transferred free of charge by direct sale by a producer in a quota year without that producer being liable to pay levy;

“direct sales quota holder” means a person in whose name direct sales quota is registered pursuant to regulation 4;

(a) O.J. L 94, 31.3.04 p.22, as last amended by Commission Regulation (EC) 793/2009 (O.J. L 228, 1.9.09, p.7). Although Council Regulation (EC) No 1788/2003 (O.J. L 270, 21.10.03, p.123) was repealed on 1st April 2008 by virtue of Article 201(1)(b) of Council Regulation (EC) No 1234/2007 (“the Single CMO Regulation”), the reference to Council Regulation (EC) No 1788/03 is to be read as a reference to the Single CMO Regulation by virtue of Article 202 of the Single CMO Regulation.

(b) O.J. L 299, 16.11.07, p.1, as last amended by Regulation (EU) 1234/2010 (O.J. L 346, 30.12.10, p.11).

“direct seller” means a producer who produces milk and treats that milk or processes it into milk products on the holding of that person and subsequently sells or transfers free of charge that milk or those milk products without their having been further treated or processed by a different undertaking which treats or processes milk or milk products;

“electronic communication” has the same meaning as in section 15 of the Electronic Communications Act 2000(a);

“the General Provisions Regulations” means the Dairy Produce Quotas (General Provisions) Regulations 2002(b);

“holding” has the same meaning as in Article 65(d) of the Council Regulation;

“interest” includes a licence to occupy land and the interest of a mortgagee and a trustee, but does not include the interest of a beneficiary under a trust or settlement;

“levy” means the surplus levy payable to the Scottish Ministers under the Community legislation and these Regulations;

“milk” has the same meaning as in Article 65(a) of the Council Regulation;

“national reserve” has the meaning given it by regulation 4 of the General Provisions Regulations;

“occupier” includes, in relation to land in respect of which there is no occupier, the person entitled to grant occupation of that land to another, and, during the currency of an interest mentioned in regulation 16(1), the person entitled to grant occupation when that interest terminates, and “occupation” shall be construed accordingly;

“producer” has the same meaning as in Article 65(c) of the Council Regulation;

“prospective apportionment”, in relation to quota in respect of a holding, means an apportionment of quota between the persons with an interest in the holding for the purposes of ascertaining the quota referable to a part of that holding in the event of a transfer of that part;

“purchaser” means a purchaser within the meaning of Article 65(e) of the Council Regulation and, other than in regulations 5(1) to (4) and 31(7), approved by the Scottish Ministers pursuant to regulation 5 and Article 23 of the Commission Regulation;

“purchaser quota” means the quantity of milk which may be delivered to a purchaser during a quota year without any liability for levy arising;

“quota” means direct sales quota or wholesale quota, as the case may be;

“quota holder”, in relation to quota, means the person in whose name the quota is registered;

“quota year” means any of the periods of twelve months referred to in Article 66(1) of the Council Regulation;

“registered wholesale quota” means wholesale quota registered pursuant to regulation 4(3) and (4);

“relevant competent authority” has the meaning given by regulation 3 of the General Provisions Regulations;

“relevant person” means a producer, a purchaser, any employee or agent of a producer or of a purchaser, any milk haulier, any person undertaking butterfat testing for purchasers in a laboratory, a processor of milk or milk products, or any other person involved in the buying, selling or supply of milk or milk products obtained directly from a producer or purchaser, but does not include a consumer of milk or milk products;

(a) 2000 c.7. Section 15 is amended by Schedule 17, paragraph 158 of the Communications Act 2003 (2003 c.21).

(b) S.I. 2002/458, as amended by S.I. 2005/466, S.I. 2007/477, and S.I. 2008/438.

“Scottish Islands area” means either—

- (a) the islands of Orkney except for the island of Stronsay; or
- (b) the islands of Jura, Gigha, Arran, Bute, Great Cumbrae and Little Cumbrae, the Kintyre peninsula south of Tarbert and the areas of land within the Argyll and Bute District comprising those parts of the parishes of Dunoon and Kilmun and Inverchaolain shown bounded by a red line on a map marked “Map referred to in sub paragraph (b) of the definition of Scottish Islands area in regulation 2(1) of the Dairy Produce Quotas (Scotland) Regulations 2005”, dated 10th February 2005, signed on behalf of the Scottish Ministers and deposited at the offices of the Scottish Government Rural and Environment Directorate, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD;

“transferee” means—

- (a) where quota is transferred with a holding or part of a holding, a person who replaces another as occupier of that holding or part of a holding; and
- (b) in any other case, the person to whom quota is transferred;

“transferor” means—

- (a) where quota is transferred with a holding or part of a holding, a person who is replaced by another occupier of that holding or part of a holding; and
- (b) in any other case, the person from whom quota is transferred;

“unused quota” means quota remaining unused after any direct sales or deliveries have been taken into account, following such adjustment (if any) as is required by Article 10(1) of the Commission Regulation (which concerns the fat content of milk), and “used quota” shall be construed accordingly;

“wholesale producer” means a producer who delivers milk to a purchaser;

“wholesale quota” means the quantity of milk which may be delivered to a purchaser by a wholesale producer in a quota year without that producer being liable to pay levy;

“wholesale quota holder” means a person in whose name wholesale quota is registered pursuant to regulation 4; and

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(a).

(1A) References in these Regulations to—

- (a) Article 55(1)(a);
- (b) Article 55(2), in so far as it relates to milk and other milk products; and
- (c) the provisions of, or referred to in, Section III of Chapter III of Part II,

of the Council Regulation, and to the Commission Regulation, are references to those Articles and provisions and to the Commission Regulation as amended from time to time.”.

2. In regulation 4(9) (registers and notices to be maintained and prepared by the Scottish Ministers), for “Article 15 of the Council Regulation” substitute “Article 72 of the Council Regulation”.

3. In regulation 9(1) (transfer of quota with transfer of land: general), for “Article 17 of the Council Regulation” substitute “Article 74 of the Council Regulation”.

4. In regulation 13(2) (transfer of quota without transfer of land), for “Article 18 of the Council Regulation” substitute “Article 75 of the Council Regulation”.

(a) 1971 c.80 as amended by St Andrew’s Day Bank Holiday (Scotland) Act 2007 asp 2, section 1.

5. In regulation 15(1) (temporary transfer of quota), for “Article 16 of the Council Regulation” substitute “Article 73 of the Council Regulation”.

6. In regulation 19(2) (temporary reallocation of quota), for “Article 10(3) of the Council Regulation” substitute “Article 80(3) of the Council Regulation”.

7. In regulation 21 (conversion of quota: general)—

- (a) in paragraphs (1)(a) and (2)(b), for “Article 6(2) and (5) of the Council Regulation”, substitute “Article 67(2) and (5) of the Council Regulation”; and
- (b) in paragraph (1)(b), for “Article 11(2) of the Council Regulation” substitute “Article 81(2) of the Council Regulation”.

8. In regulation 22(1) (conversion of quota: restriction on transfers of converted quota in conversion year), for “Article 17 of the Council Regulation” substitute “Article 74 of the Council Regulation”.

9. In regulation 23(2) (adjustment of purchaser quota), for “Article 11(2) of the Council Regulation” substitute “Article 81(2) of the Council Regulation”.

10. In regulation 25 (determination whether reduction in downward butterfat adjustment is required in relation to deliveries), omit paragraphs (4) to (7).

11. In regulation 26 (determination whether levy on deliveries is payable)—

- (a) for paragraph (1) substitute—

“(1) Where the total amount of the wholesale quota of wholesale producers, including converted quota, together with the total amount of wholesale quota in the national reserve exceeds the total volume of deliveries referred to in regulation 25(1)(b), the Scottish Ministers shall determine that no levy is payable on deliveries.”; and

- (b) for paragraph (3) substitute—

“(3) Where the total amount of the wholesale quota of wholesale producers, including converted quota, together with the total amount of wholesale quota in the national reserve is less than the total volume of deliveries referred to in regulation 25(1)(b), the Scottish Ministers shall notify all purchasers that levy is payable on that volume of deliveries.”.

12. In regulation 27 (reallocation of wholesale producers’ wholesale quota)—

- (a) in paragraph (1), for “Article 10(3) of the Council Regulation” substitute “Article 80(3) of the Council Regulation”; and
- (b) in paragraph (2), omit “any adjustment required under regulation 25(4),”.

13. In regulation 28 (determination of liability for levy on deliveries)—

- (a) in paragraph (1), for “Article 10(3) of the Council Regulation” substitute “Article 80(3) of the Council Regulation”; and
- (b) in paragraph (2)(b), for “Article 2 of the Council Regulation” substitute “Article 78(1) of the Council Regulation”.

14. In regulation 30 (determination of liability for levy on direct sales)—

- (a) in paragraph (1), for “Article 12 of the Council Regulation” substitute “Article 83 of the Council Regulation”; and
- (b) in paragraphs (11)(b) and (14), for “Article 2 of the Council Regulation” substitute “Article 78(1) of the Council Regulation”.

15. In regulation 31 (payment and recovery of levy)—

- (a) in paragraph (2)—

- (i) in sub-paragraph (a), for “Article 11(1) of the Council Regulation” substitute “Article 81(1) of the Council Regulation”; and

- (ii) in sub-paragraph (b), for “Article 12(4) of the Council Regulation” substitute “Article 83(4) of the Council Regulation”; and
- (b) in paragraph (3), for “Article 11(3) of the Council Regulation” substitute “Article 81(3) of the Council Regulation”.

16. In regulation 33(2) (information), for “the total national reference quantity” to the end, substitute “the total national quota for the United Kingdom referred to in Article 66(3) and Annex IX of the Council Regulation.”.

17. In regulation 38 (confiscation of quota), in paragraphs (1) and (3), for “Article 15 of the Council Regulation”, substitute “Article 72 of the Council Regulation”.

18. In regulation 39 (restoration of quota), in paragraphs (1) and (3), for “Article 15(1) of the Council Regulation” substitute “Article 72(1) of the Council Regulation”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Dairy Produce Quotas (Scotland) Regulations 2005 (“the principal Regulations”).

The principal Regulations implement Council Regulation (EC) No 1788/2003 establishing a levy in the milk and milk products sector (O.J. No L 270, 21.10.03, p.123) (“the 2003 Regulation”) and Commission Regulation (EC) No 595/2004 laying down detailed rules for applying Council Regulation (EC) No. 1788/2003 establishing a levy in the milk and milk products sector (O.J. No. L 94, 31.3.04, p.22).

The 2003 Regulation was repealed and replaced by Article 55(1)(a) and (2), in so far as it relates to milk and other milk products, and Section III of Chapter III of Part II (Articles 65 to 84) of Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation).

These Regulations replace references in the principal Regulations to the provisions of the 2003 Regulation with the corresponding references to the replacement provisions of the Single CMO Regulation.

Article 66(1) and Annex IX of the Single CMO Regulation fix the amount of national quotas, and Article 66(3) provides that these amounts may be reviewed. These provisions replace Article 1(1) and (3) and Annex I of the 2003 Regulation. The national quotas for the United Kingdom for the period 1st April 2008 to 1st April 2015 are increased in the Single CMO Regulation. These Regulations amend regulation 33(2) of the principal Regulations to refer to Article 66(3) of, and Annex IX of the Single CMO Regulation instead of Article 1(3) and Annex I of the 2003 Regulation (paragraph 16 of the Schedule).

Article 10(1) of the 2003 Regulation provided that in order to draw up the definitive levy statement, the quantities delivered by each producer had to be increased or reduced to reflect any difference between the real fat content and the reference fat content. Article 10(2) provided that the levy had to be calculated on the greater of the sum of the actual deliveries or the sum of the deliveries as adjusted. It also provided that if the sum of the actual deliveries was greater than the sum of the adjusted deliveries, downwards adjustments which had been made to individual deliveries should be proportionately reduced to bring the sum of the adjusted deliveries into line with the sum of the actual deliveries. Article 80(1) of the Single CMO Regulation restates Article 10(1) of the 2003 Regulation, but now provides that the levy shall in all cases be calculated on the basis of the sum of the adjusted deliveries. There is no longer a requirement to reduce downwards adjustments made to individual deliveries. These Regulations amend regulation 25 of the principal Regulations to remove the requirement to reduce downwards adjustments where the sum of the actual deliveries is greater than the sum of the adjusted deliveries, and make a consequential amendment to regulation 27 of the principal Regulations. They also amend regulation 26 of the principal Regulations to provide that the levy is payable if the sum of the deliveries as adjusted is greater than the total amount of wholesale quota available to wholesale producers (paragraphs 10 to 12 of the Schedule).

These Regulations also make some minor changes to the definitions in the principal Regulations of direct sale, holding, levy, milk, producer, purchaser, quota year and registered wholesale quota to incorporate references to the provisions of the Single CMO Regulation. There is also a change to the definition of “national reserve” to correct an error in the principal Regulations.

These Regulations also re-enact definitions in regulation 2(1) of the principal Regulations.

These Regulations add a new regulation 2(1A) in the principal Regulations which provides that the references to certain provisions of the Single CMO Regulation and references to Commission Regulation (EC) No 595/2004 are references to those provisions and to that Commission Regulation as amended from time to time. They also amend the Schedule to the Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations 2004 to replace the reference to the 2003 Regulation with a reference to provisions of the Single CMO Regulation

as amended from time to time. Any amendments to those provisions and that Commission Regulation will be published on the Europa website, (http://europa.eu/documentation/legislation/index_en.htm). Additionally the Scottish Government will publish relevant information on the Scottish Government website (www.scotland.gov.uk) and updates will be sent to interested parties where considered appropriate.

A Business and Regulatory Impact Assessment has not been produced for this instrument, as there will be no cost to business.

SCOTTISH STATUTORY INSTRUMENTS

2011 No. 84

FOOD

The Drinking Milk (Scotland) Regulations 2011

Made - - - - *9th February 2011*

Laid before the Scottish Parliament *11th February 2011*

Coming into force - - *1st April 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 1A of Schedule 2 to the European Communities Act 1972^(a) and sections 6(4), 16(1), 17, 26(1) and (3) and 48(1) of the Food Safety Act 1990^(b) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972^(c) and it appears to the Scottish Ministers that it is expedient for the references to the provisions of Article 114(2) of, and Annex XIII to, Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)^(d) to be construed as references to those provisions as amended from time to time.

The Scottish Ministers have carried out consultation as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety^(e).

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- (a) 1972 c.68 (“the 1972 Act”). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”) and was amended by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), Schedule, Part 1.
- (b) 1990 c.16 (“the 1990 Act”). Section 6(4) was amended by section 31 of, and paragraph 6 of Schedule 9 to, the Deregulation and Contracting Out Act 1994 (c.40), and by section 40(1) of, and paragraphs 7 and 10(3) of Schedule 5 to, the Food Standards Act 1999 (c.28) (“the 1999 Act”). Section 16(1) was amended by section 40(1) of, and paragraphs 7 and 8 of Schedule 5 to, the 1999 Act. Section 17 was amended by section 40(1) of, and paragraphs 7, 8 and 12(a) and (b) of Schedule 5 to, the 1999 Act. Section 26(3) was repealed in part by section 40(4) of, and Schedule 6 to, the 1999 Act. Section 48(1) was amended by section 40(1) of, and paragraphs 7 and 8 of Schedule 5 to, the 1999 Act. The requirement on the Scottish Ministers under section 48(4) to consult with such organisations as appear to them to be representative of interests likely to be substantially affected by this instrument is disapplied by virtue of section 48(4C), as inserted by S.I. 2004/2990, as consultation is required in respect of this instrument by Article 9 of Regulation (EC) No 178/2002. The amendments to the 1990 Act made by Schedule 5 to the 1999 Act which extend to Scotland are to be taken as a pre-commencement enactment for the purposes of the 1998 Act by section 40(2) of the 1999 Act. The functions of the Secretary of State, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46) (“the 1998 Act”).
- (c) 1972 c.68. Section 2(2) was amended by the 1998 Act, Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the 2006 Act. Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by Schedule, Part 1 of the 2008 Act. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.
- (d) O.J. L 299, 16.11.07, p.1. This Regulation was last amended by Regulation (EU) No 1234/2010 (O.J. L 346, 30.12.10, p.11).
- (e) O.J. L 31, 1.2.02, p.1, to which there are no amendments relevant to Article 9.

To the extent that these Regulations are made in exercise of powers under the Food Safety Act 1990, the Scottish Ministers have had regard to relevant advice given by the Food Standards Agency as required by section 48(4A) of that Act^(a).

Citation, commencement and extent

1. These Regulations—

- (a) may be cited as the Drinking Milk (Scotland) Regulations 2011;
- (b) come into force on 1st April 2011; and
- (c) extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the 1990 Act” means the Food Safety Act 1990;

“the Annex” means Annex XIII to the Council Regulation;

“Article 114(2)” means Article 114(2) of the Council Regulation;

“the Council Regulation” means Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation);

“drinking milk” has the meaning given in point I(b) of the Annex;

“food authority” has the same meaning as in section 5(2)(b) of the 1990 Act;

“milk” has the meaning given in point I(a) of the Annex; and

“sell” includes possess for sale and offer, expose or advertise for sale.

(2) Other expressions used in these Regulations and in the Council Regulation which are not defined in these Regulations have the same meaning in these Regulations as they have in the Council Regulation.

(3) References in these Regulations to Article 114(2) and the Annex are references to Article 114(2) and the Annex as amended from time to time.

Sale or delivery of milk and use of sales description

3. No person may—

- (a) sell, or deliver, milk; or
- (b) use, or omit to use, a sales description for any product,

in contravention of Article 114(2) or point II(1) and (2) of the Annex, as read with point III of the Annex.

Importation of products from outside the EU for sale as drinking milk

4. No person may import into Scotland from outside the EU any product for sale as drinking milk in contravention of point IV of the Annex.

Enforcement

5.—(1) Each food authority must enforce and execute the provisions of these Regulations within its area.

(a) Section 48(4A) was inserted by section 40(1) of, and paragraphs 7 and 21 of Schedule 5 to, the 1999 Act.

(b) Section 5(2) was amended by section 180 of, and paragraph 163(1) and (2) of Schedule 13 to, the Local Government etc. (Scotland) Act 1994 (c.39).

(2) Each food authority must give such assistance and information to any other food authority in Great Britain as that other food authority may reasonably require for the purpose of carrying out its duties under these Regulations or an equivalent provision.

(3) In this regulation, “equivalent provision” means a provision in Regulations that extends to England or Wales for the purpose of implementing Article 114(2) or the Annex.

Offences and penalties

6. Any person who fails to comply with regulation 3 or 4 is—

- (a) guilty of an offence; and
- (b) liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Application of provisions of the 1990 Act

7.—(1) The provisions of the 1990 Act set out in paragraph (3) apply for the purposes of these Regulations with the modifications specified in paragraph (4).

(2) Subject to paragraph (5), for the purposes of these Regulations, any reference in those provisions to the 1990 Act or to a Part or a section thereof must be construed as a reference to these Regulations.

(3) The provisions are—

- (a) section 2 (extended meaning of “sale” etc.)(**a**);
- (b) section 3 (presumptions that food intended for human consumption);
- (c) section 20 (offences due to fault of another person);
- (d) section 21 (defence of due diligence)(**b**);
- (e) section 30(8) (relating to documentary evidence);
- (f) section 32 (powers of entry);
- (g) section 33 (obstruction etc. of officers);
- (h) section 35(1), (2) and (3)(b) (punishment of offences) insofar as those subsections relate to offences under section 33(1) and (2);
- (i) section 36 (offences by bodies corporate);
- (j) section 36A (offences by Scottish partnerships)(**c**); and
- (k) section 44 (protection of officers acting in good faith).

(4) In relation to section 32, the specified modifications are—

- (a) in subsection (1)—
 - (i) the references to premises are to be construed as not including premises used only as a private dwelling-house; and
 - (ii) omit from “but admission” to “the occupier”;
- (b) in subsection (1)(a), omit “, or of regulations or orders made under it”;
- (c) in subsections (3), (4), (5), (7), (8) and (9), the references to “this section” are to be construed as references to that section as applied to these Regulations; and
- (d) in subsection (6)(a), omit “or of regulations or orders made under it”.

(5) Paragraph (2) shall not apply to the references to a section of the 1990 Act which are modified by paragraph (4)(c).

(a) Section 2 was amended by section 40(1) of, and paragraphs 7 and 8 of Schedule 5 to, the Food Standards Act 1999 (c.28).

(b) Section 21 was amended by S.I. 2004/3279.

(c) Section 36A was inserted by section 40(1) of, and paragraphs 7 and 16 of Schedule 5 to, the Food Standards Act 1999 (c.28).

Amendments

8.—(1) Regulation 2(1) of the Food Labelling Regulations 1996(**a**) (interpretation) is amended in accordance with paragraphs (2) and (3).

(2) After the definition of “confectionery product”, insert—

““Council Regulation 1234/2007” means Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)(**b**);”.

(3) In the definitions of “semi-skimmed milk”, “skimmed milk” and “whole milk”, for “Article 3(1) of Council Regulation (EC) No 2597/97”, substitute—

“point III(1) of Annex XIII to Council Regulation 1234/2007”.

9. In regulation 2(1) of the Milk and Dairies (Scotland) Regulations 1990(**c**) (interpretation and enforcement), in the definition of “Milk”, for “Article 3(1)(b) of Council Regulation (EC) No 2597/97 laying down additional rules on the common organisation of the market in milk and milk products for drinking milk” substitute—

“point III(1)(b) of Annex XIII to Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)(**d**)”.

Revocation

10. The Drinking Milk Regulations 1998(**e**) and the entry relating to those Regulations in Schedule 8 to the Food Hygiene (Scotland) Regulations 2006(**f**) are revoked.

RICHARD LOCHHEAD

A member of the Scottish Executive

St Andrew’s House,
Edinburgh
9th February 2011

(a) S.I. 1996/1499. Regulation 2(1) is relevantly amended by S.I. 1998/2424 and S.S.I. 2006/3.
(b) O.J. L 299, 16.11.07, p.1. This Regulation was last amended by Regulation (EU) No 1234/2010 (O.J. L 346, 30.12.10, p.11).
(c) S.I. 1990/2507. Regulation 2(1) is relevantly amended by S.I. 1992/3136 and S.I. 1998/2424 .
(d) O.J. L 299, 16.11.07, p.1. This Regulation was last amended by Regulation (EU) No 1234/2010 (O.J. L 346, 30.12.10), p.11).
(e) S.I. 1998/2424; amended insofar as it applies to Scotland by S.S.I. 2005/616 and 2006/3.
(f) S.S.I. 2006/3.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the enforcement of Article 114(2) of, and Annex XIII (“the Annex”) to, Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (“the Single CMO Regulation”). The Drinking Milk Regulations 1998 are revoked (regulation 10).

The Drinking Milk Regulations 1998 enforced Council Regulation (EC) No 2597/97 laying down additional rules on the common organisation of the market in milk and milk products for drinking milk (O.J. L 351, 23.12.97, p.13). That Regulation was amended by Council Regulation (EC) No 1602/1999 (O.J. L 189, 22.7.99, p.43) and by Council Regulation (EC) No 1153/2007 (O.J. L 258, 4.10.07, p.6) and then repealed by the Single CMO Regulation. The Single CMO Regulation consolidated the old EU law, including the new provision from Council Regulation (EC) No 1153/2007 which allows milk with a fat content outwith the three set fat categories, whole milk, semi-skimmed and skimmed milk, to be marketed subject to the correct labelling and the deletion made by Council Regulation (EC) No 1602/1999 in relation to fat content requirement.

These Regulations provide that the sale or delivery of milk and the use or non-use of a sales description for any product in contravention of the Annex is prohibited (regulation 3). The importation of any product from outside the EU in contravention of point IV of the Annex is also prohibited (regulation 4). Provision is made for enforcement and offences and penalties (regulations 5 and 6).

Certain provisions of the Food Safety Act 1990 are applied for the purposes of these Regulations with certain modifications (regulation 7) including the application of section 32 (power of entry) in order to assist with the enforcement of these Regulations. Certain amendments are made to the Food Labelling Regulations 1996 to replace the definitions of semi-skimmed, skimmed and whole milk and to insert a definition of the Single CMO Regulation (regulation 8). Certain amendments are made to the Milk and Dairies (Scotland) Regulations 1990 to update a definition to the Single CMO Regulation (regulation 9).

These Regulations provide that references in these Regulations to Article 114(2) and the Annex of the Single CMO Regulation are references to those provisions as amended from time to time. Any amendments to these provisions will be published on the Europa website, (http://europa.eu/documentation/legislation/index_en.htm). Additionally the Scottish Government will publish relevant information on the Scottish Government website (www.scotland.gov.uk) and updates will be sent to interested parties where considered appropriate. The definition of the Single CMO Regulation to be inserted into the Food Labelling Regulations 1996 and the amendment to the Milk and Dairies (Scotland) Regulations 1990 referring to the Single CMO Regulation, however, are not ambulatory references to the Single CMO Regulation as amended from time to time.

A Business and Regulatory Impact Assessment has not been produced for this instrument as there will be no cost to business.

SCOTTISH STATUTORY INSTRUMENTS

2011 No. 85

AGRICULTURE

**The Rural Development Contracts (Land Managers Options)
(Scotland) Amendment Regulations 2011**

Made - - - - 10th February 2011

Laid before the Scottish Parliament 14th February 2011

Coming into force - - 15th March 2011

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972^(a) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in that section and it appears to the Scottish Ministers that it is expedient for references in these Regulations to Council Regulation (EC) No 834/2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91^(b) to be construed as references to that Regulation as amended from time to time.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Rural Development Contracts (Land Managers Options) (Scotland) Amendment Regulations 2011 and come into force on 15th March 2011.

(2) In these Regulations, “the principal Regulations” means the Rural Development Contracts (Land Managers Options) (Scotland) Regulations 2008^(c).

Amendment of the principal Regulations

2. The principal Regulations are amended in accordance with regulations 3 to 27.

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Paragraph 1A of Schedule 2 was inserted by the 2006 Act, section 28 and was amended by the 2008 Act, Schedule, Part 1.

(b) O.J. L 189, 20.7.2007, p.1. This Regulation has been amended by Council Regulation (EC) No 967/2008 (O.J. L 264, 3.10.2008, p.1).

(c) S.S.I. 2008/159, amended by S.S.I. 2009/155.

Amendment to regulation 2

3. In regulation 2(1) (interpretation)—

- (a) omit the definitions of—
 - (i) “IACS year”; and
 - (ii) “relevant competent authority”;
- (b) in the definition of “area related options”, after “19” insert “and 23 and 24”;
- (c) for the definition of “Commission Regulation 796/2004” substitute—

““Commission Regulation 1122/2009” means Commission Regulation (EC) No 1122/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector(a);”;
- (d) for the definition of “Commission Regulation 1975/2006” substitute—

““Commission Regulation 65/2011” means Commission Regulation (EU) No 65/2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures(b);”;
- (e) before the definition of “compliance requirements” insert—

““competent authority” has the meaning given to it in regulation 3 of the IACS Regulations;”;
- (f) in the definition of “IACS Regulations”, for “the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2005” substitute “the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009(c)”;
- (g) for the definition of “scheme year” substitute—

““scheme year” means the year commencing on the last day for submission of the single application under regulation 5 of the IACS Regulations;”;
- (h) in the definition of “single application”, for “Commission Regulation 796/2004” substitute “Commission Regulation 1122/2009”.

Amendment to regulation 3

4. In regulation 3 (applications for aid), for paragraph (6) substitute—

“(6) An applicant must also submit a single application to a competent authority in accordance with the IACS Regulations.”.

Amendment to regulation 5

5. In regulation 5 (maximum amount of aid payable)—

- (a) for “relevant competent authority” substitute “competent authority”; and
- (b) for “Commission Regulation 796/2004” substitute “Commission Regulation 1122/2009”.

(a) O.J. L 316, 2.12.2009, p.65. This Regulation has been amended by Commission Regulation (EU) No 146/2010 (O.J. L 47, 24.2.2010, p.1).

(b) O.J. L 25, 28.1.2011, p.8.

(c) S.I. 2009/3263.

Amendment to regulation 7

6. In regulation 7(2)(c) (restrictions on acceptance of applications and payment of aid), for “Articles 18, 23 or 31 of Commission Regulation 1975/2006” substitute “Article 18, 21 or 30 of Commission Regulation 65/2011”.

Amendment to regulation 8

7. In regulation 8 (eligible land)—

- (a) in paragraph (1)(a)—
 - (i) for “relevant competent authority” substitute “competent authority”; and
 - (ii) for “Commission Regulation 796/2004” substitute “Commission Regulation 1122/2009”; and
- (b) in paragraph (3), for “Commission Regulation 796/2004” substitute “Commission Regulation 1122/2009”.

Amendment to regulation 10

8. In regulation 10(5) and (6) (undertakings), after “17” insert “and 23 and 24”.

Amendment to regulation 13

9. In regulation 13(2)(d) (powers of authorised persons), for “Commission Regulation 1975/2996” substitute “Commission Regulation 65/2011”.

Amendment to regulation 14

10. In regulation 14(1)(c) (breaches of undertakings etc.), for “Commission Regulation 1975/2006” substitute “Commission Regulation 65/2011”.

Amendment to regulation 15

11. In regulation 15(e) (other cases in which recovery etc. powers apply), for “Commission Regulation 1975/2006” substitute “Commission Regulation 65/2011”.

Amendment to regulation 16

12. In regulation 16(4) (powers of recovery etc. of the Scottish Ministers), for “Council Regulation 1975/2006” substitute “Commission Regulation 65/2011”.

Amendment to Schedule 2

13. In Schedule 2 (land managers options: option, activities and eligibility conditions and rates of payment)—

- (a) omit the introductory paragraph; and
- (b) amend the land managers options in accordance with regulations 14 to 26.

Amendment of option 2 (business audit)

14. Omit the whole of option 2 (business audit).

Amendment of option 3 (nutrient management plan)

15. Omit the whole of option 3 (nutrient management plan).

Amendment of option 9 (wild bird seed mixture/unharvested crop)

16. In column 2 of option 9 (wild bird seed mixture/unharvested crop)—

- (a) omit “and” at the end of paragraph (3)(a); and
- (b) in paragraph (3)(b), after “permitted”, insert—

“except with the prior written consent of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of non-native invasive weeds; and
- (c) applicants need not manage the same field each year, but must give details of the different fields and their locations and their areas in the application for aid. If during the relevant period, a different rotation to that originally approved is agreed with the Scottish Ministers, the area upon which the annual management payment is calculated will be restricted to either the area originally approved or the revised area, whichever is smaller.”

Amendment of option 11 (summer cattle grazing)

17. In column 3 of option 11 (summer cattle grazing), for “£1.30” substitute “£1.95”.

Amendment of option 12 (management of moorland grazing)

18. In column 2 of option 12 (management of moorland grazing), in paragraph (2)(b)—

- (a) for “changes in”, substitute “management of”; and
- (b) omit “managing”.

Amendment of option 13 (management of linear features: hedgerows and hedgerow trees and dykes)

19. In column 2 of option 13 (management of linear features: hedgerows and hedgerow trees and dykes), in paragraph (2)—

- (a) for “For both options (a) and (b) above”, substitute “For sub-paragraphs (a) and (b) of option A referred to above”;
- (b) omit “and” at the end of head (ii); and
- (c) at the end of head (iii), insert—

“; and
- (iv) cut a different section of hedge each year so that all hedges are cut in rotation.”.

Amendment of option 14 (management of grass margins and beetlebanks)

20. In option 14 (management of grass margins and beetlebanks)—

- (a) in column 2—
 - (i) for paragraph (3)(a), substitute—

“(a) manages a strip between 1.5 metres to 6 metres in width in an arable field with a minimum width of 3 metres or more where the management is to benefit Hen Harriers, Corn Buntings, Barn Owls or Kestrels and plants at least one species of nectar-feeding plant such as red clover if none is currently planted;”;
 - (ii) in paragraph (3)(c), before “establishes”, insert “where no strip currently exists,”;
 - (iii) in paragraph (3)(d), omit “; spot treatment of injurious weeds or non-native invasive weeds is permitted”;
 - (iv) omit paragraph (3)(g);

- (v) in paragraph 3(i), after “site”, insert “except with the prior written consent of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of non-native invasive weeds”;
- (vi) in paragraph (4), for “transferred”, in both places where it occurs, substitute “relocated”; and
- (vii) in paragraph (5), for “Beneficiaries” substitute “Applicants”; and
- (b) in column 3, for “£473.76 per hectare per scheme year.”, substitute “Establishment and management, £473.76 per hectare per scheme year. Management only, £407.92 per hectare per scheme year.”.

Amendment of option 15 (biodiversity cropping on in-bye land)

21. In column 2 of option 15 (biodiversity cropping on in-bye land)—

- (a) omit paragraph (2)(c); and
- (b) in paragraph (2)(d), after “site”, insert “except with the prior written consent of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of non-native invasive weeds”.

Amendment of option 16 (management of conservation headlands)

22. In column 2 of option 16 (management of conservation headlands), for paragraph (2)(b), substitute—

- “(b) does not apply pesticides except with the prior written consent of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of non-native invasive weeds.”.

Amendment of option 17 (retention of winter stubbles)

23. In column 2 of option 17 (retention of winter stubbles), for paragraph (2), substitute—

- “(2) An applicant is eligible for payment under this option if the applicant—
 - (a) retains stubbles from the harvest of spring or winter cereals, protein or oilseed crops and does not plough or cultivate the area until the end of the following February;
 - (b) does not apply post-harvest pesticides except with the prior written consent of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of non-native invasive weeds; and
 - (c) does not apply pre-harvest desiccants.”.

Amendment of option 21 (active management to improve the condition of vernacular rural buildings, archaeological or historic sites and historic landscapes)

24. In option 21 (active management to improve the condition of vernacular rural buildings, archaeological or historic sites and historic landscapes)—

- (a) in column 2—
 - (i) in paragraph (1), option A, for “carries out management works” to “historic landscapes”, substitute “carries out management works to improve the condition of archaeological or historic sites or historic landscapes in accordance with the scheme guidance”;
 - (ii) in paragraphs (2)(a)(i) and (3)(a)(i), for “during year 3 of the undertaking and during year 5 of the undertaking”, substitute “and after 1 year, 3 years and 5 years following commencement of the undertaking”;
 - (iii) omit “and” at the end of paragraph (2)(b)(iv);

- (iv) for paragraph (2)(c), substitute—
 - “(c) an applicant must submit receipted invoices in support of a claim for payment; and
 - (d) an applicant is not eligible for payment in respect of—
 - (i) artefact find spots and battlefield sites; or
 - (ii) buildings, structures and engineering works that are still serving a function, or are in use, or are intended to be brought back into use.”;
- (v) for paragraph (3)(b), substitute—
 - “(b) an applicant must submit receipted invoices in support of a claim for payment; and”;
- (vi) omit “or” at the end of paragraph (3)(c)(ii);
- (vii) at the end of paragraph (3)(c)(iii), insert—
 - “(iv) if the active management and repair work being undertaken is part of a project to bring other buildings on site into use for human habitation or occupation, either permanent, temporary or seasonal; or
 - (v) if the works to the building entail the repair or introduction of electrics, plumbing, non-original features, materials, interior fixtures or fittings unless required by building regulations or health and safety legislation.
- (4) In the 5 years following the end of the year in which payment was made—
 - (a) items funded under this option must be maintained and not modified; and
 - (b) any building repaired under this option must not be sold or used for human habitation or occupation, either permanent, temporary or seasonal.”; and
- (b) in column 3, for “at”, in both places where it occurs, substitute “up to”.

Amendment of option 22 (animal welfare management programme)

25. In option 22 (animal welfare management programme)—

- (a) in column 2, paragraph (4)—
 - (i) in Action Three (maintaining bodily condition), in the third table (sheep), in the second column (lowland ewes, lambing), for “2.0-2.5”, substitute “2.5-3.0”;
 - (ii) in Action Four (preventing lameness), in sub-paragraph (f), for “untaken”, substitute “undertaken”;
- (iii) for Action Six (control and prevention of diarrhoea and pneumonia), substitute—
 - “(a) The applicant must undertake a lungworm surveillance programme to comprise—
 - (i) collecting faecal samples from at least 5 milking dairy cows and 5 non-milking cows every 2 months from June to October for laboratory analysis; and
 - (ii) initiating a treatment and/or vaccination programme as appropriate if disease is identified; and
 - (b) where livestock managed together suffer an outbreak of scour or pneumonia, the applicant must—
 - (i) take faecal samples from a selection of animals affected by scour;
 - (ii) take swabs and/or blood samples from a selection of animals affected by pneumonia;
 - (iii) ensure laboratory analysis for diarrhoea and pneumonia pathogens is carried out; and
 - (iv) reduce stocking density, increase ventilation and/or carry out treatment and/or vaccination as appropriate.”; and

- (iv) in Action Seven (liver fluke control)—
 - (aa) omit sub-paragraph (d);
 - (bb) omit “and” at the end of sub-paragraph (e); and
 - (cc) at the end of sub-paragraph (f), insert—
 - “; and
 - (g) conduct an annual review of the effectiveness of treatment and the extent of any area identified as high risk areas of ground for grazing and, in doing so, must take account of the advice of a veterinary surgeon together with any feedback referred to in sub-paragraph (a) and the result of any analysis referred to in sub-paragraph (b)”;
- (b) in column 3, for the entry corresponding to Action One in paragraph (4) of column 2, substitute—
 - “£372.00 per scheme year, plus £30.00 per hectare per scheme year for field based separation facility up to 5 hectares (or £29.00 per hectare per scheme year for field based separation facility up to 5 hectares on nitrate vulnerable zone land).”.

Additional land managers options

26. After option 22, insert—

| <i>“Column 1 Option</i> | <i>Column 2 Activities and Eligibility Conditions</i> | <i>Column 3 Rate of Payment</i> |
|-----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| 23. Natural regeneration after cereals | <p>(1) This is a 5 year commitment.</p> <p>(2) An applicant is eligible for payment under this option if the applicant—</p> <ul style="list-style-type: none"> (a) retains stubbles from the harvest of winter cereals and leaves the area uncropped to naturally regenerate and produce rough fallow conditions until the end of August following the harvest; (b) does not graze, plough or cultivate the area of stubble and any subsequent natural regeneration until after 31st August in the year following the harvest; and (c) following the harvest, does not apply fertilisers, manure or pesticides except with the prior | £406 per hectare per scheme year |

| <i>“Column 1 Option</i> | <i>Column 2 Activities and Eligibility Conditions</i> | <i>Column 3 Rate of Payment</i> |
|-------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>written consent of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of non-native invasive weeds.</p> <p>(3) Plots may be rotated and the location of the areas managed for the purpose of this option may change from year to year but the number of hectares applied for in any year must be maintained for 5 years.</p> <p>(4) Where crops are not rotated an applicant must—</p> <p>(a) cut at least once in every 2 years in early autumn to a minimum sward height of 10 centimetres and remove cuttings; or</p> <p>(b) leave plots uncut if conservation benefits are expected to result.</p> <p>(5) Applicants must set out the conservation objectives in a plan which must be retained and be available for inspection.</p> | |
| 24. Maintenance of organic farming | <p>(1) This is a 5 year commitment.</p> <p>(2) Land is eligible if—</p> <p>(a) the land is an organic production unit or, if the applicant is a grazings committee, the common grazings is fully organic;</p> <p>(b) the land is at least one hectare;</p> | <p>£60 for arable and vegetable and fruit land, £50 for improved grassland and £5 for unimproved grassland/rough grazing, per hectare per scheme year.</p> |

| <i>“Column 1 Option</i> | <i>Column 2 Activities and Eligibility Conditions</i> | <i>Column 3 Rate of Payment</i> |
|-----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| | <ul style="list-style-type: none"> (c) the land falls within any of the following categories:— <ul style="list-style-type: none"> (i) arable land; (ii) improved grassland; (iii) rough grazings or unimproved grassland; (iv) vegetable and fruit land; and (d) either— <ul style="list-style-type: none"> (i) no aid is payable under these Regulations, the 2004 Regulations or the 1994 Regulations in respect of the land; or (ii) aid is payable by virtue of the 2008 Regulations, the 2004 Regulations or the 1994 Regulations in respect of the land but the entitlement to that aid has ceased before the commencement of the scheme year. | |
| | <p>(3) An applicant is eligible for payment under this option if the applicant—</p> <ul style="list-style-type: none"> (a) submits to the Scottish Ministers evidence of full organic certification for the land included in the application; (b) continues to farm the land in accordance with Council Regulation 834/2007 | |

| <i>“Column 1 Option</i> | <i>Column 2 Activities and Eligibility Conditions</i> | <i>Column 3 Rate of Payment</i> |
|-----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| | throughout the relevant period; | |
| | (c) ensures that where land is to be registered with a different control body, such registration must occur before the expiry of the existing registration; | |
| | (d) maintains full organic certification throughout the relevant period and submits confirmation of such certification to the Scottish Ministers; and | |
| | (e) where land is vegetable and fruit land, produces vegetables or fruit for a minimum of 2 years during the relevant period. | |

(4) In this option—

“control body” means an independent private third party organisation carrying out inspection and certification in the field of organic production as referred to in Article 2(p) of Council Regulation 834/2007;

“Council Regulation 834/2007” means Council Regulation (EC) No 834/2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91, as amended from time to time;

“full organic certification” means certification from a control body that the land is fully organic;

| <i>“Column 1 Option</i> | <i>Column 2 Activities and Eligibility Conditions</i> | <i>Column 3 Rate of Payment</i> |
|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| | <p>“fully organic” means land which is farmed in accordance with Council Regulation 834/2007, which has been certified as fully organic by a control body;</p> <p>“organic production unit” means land other than a common grazing, which is fully organic; and</p> <p>“vegetable and fruit land” means land used for growing vegetables and fruit.</p> | ”. |

Amendment to Schedule 3

27. In Schedule 3, Part 2 (secondary legislation)—

- (a) omit “The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2003”; and
- (b) insert at the end—

“The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008(a).”.

Saving provision

28.—(1) In respect of an application for aid relating to a land manager’s option made before 1st January 2011, the principal Regulations continue to have effect as if the amendments made by regulations 3(d), 6, 9, 10, 11 and 12 had not been made.

(2) In this regulation, a “land manager’s option” means any of the options set out in Schedule 2 to the principal Regulations.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
10th February 2011

(a) S.S.I. 2008/298, amended by S.S.I. 2008/394 and 2009/447.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Rural Development Contracts (Land Managers Options) (Scotland) Regulations 2008 (S.S.I. 2008/159) (“the 2008 Regulations”) which introduce measures to supplement Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (O.J. L 277, 21.10.2005, p.1) (“the Council Regulation”) and the detailed rules for the application of the Council Regulation.

The 2008 Regulations provide for the payment of aid to be made available by the Scottish Ministers from the Scotland Rural Development Programme 2007-13 to any person who enters into an undertaking with the Scottish Ministers to carry out or, as the case may be, carry out and maintain activities relevant to at least one of the land managers options set out in Schedule 2.

Regulation 3, among other things, inserts definitions in regulation 2(1) of the 2008 Regulations following the repeal and replacement of Commission Regulations 796/2004 and 1975/2006.

Regulations 5(b) to 7 and 9 to 12 of these Regulations replace references to Commission Regulations 796/2004 and 1975/2006 in consequence of their repeal and replacement respectively by Commission Regulations 1122/2009 and 65/2011.

Regulation 8 of these Regulations amends regulation 10(5) and (6) of the 2008 Regulations by extending the list of options, to include the new option 23 (natural regeneration after cereals) and option 24 (maintenance of organic farming), under which any activity specified in an undertaking will require cross-compliance as indicated.

Regulations 13 to 26 of these Regulations include the following amendments to Schedule 2 to the 2008 Regulations:

- option 2 (business audit) and 3 (nutrient management plan) are omitted;
- option 9 (wild bird seed mixture/unharvested crop) is amended to permit the application of pesticides only with the consent of the Scottish Ministers and to allow field rotation;
- option 11 (summer cattle grazing) is amended to increase the payment rate from £1.30 to £1.95 per hectare (per scheme year);
- option 13 (management of linear features: hedgerows and hedgerow trees and dykes) is amended to provide for an additional requirement to cut hedges in rotation;
- option 14 (management of grass margins and beetlebanks) is amended to: provide for an additional payment rate for the management only (excluding establishment) of grass margins etc.; reduce the minimum width of grass margin to benefit certain bird species; add a requirement to plant a nectar-feeding plant species; clarify that the requirement to establish a strip applies only where none exists on the land; and permit the application of pesticides only with the consent of the Scottish Ministers;
- option 15 (biodiversity cropping on in-bye land), option 16 (management of conservation headlands) and option 17 (retention of winter stubbles) are amended to permit the application of pesticides only with the consent of the Scottish Ministers, and option 17 is also amended to restrict the application of pre-harvest desiccants;
- option 21 (active management to improve the condition of vernacular rural buildings, archaeological or historic sites and historic landscapes) is amended to: refer to certain management work being carried out in accordance with the scheme guidance; clarify the requirement to maintain photographic records; remove the ability of applicants to claim in respect of their own labour or machinery costs; specify additional ineligible management work; change the payment rate limit; and impose a requirement to maintain and retain funded items for at least five years following the final payment of aid;
- option 22 (animal welfare management programme) is amended to: make a minor change to Action Three (maintaining bodily condition); make a minor correction to Action Four (preventing lameness); clarify the requirements of Action Six (control and prevention of diarrhoea and pneumonia); change the requirements under Action Seven (liver fluke

control); and clarify the rate of payment available under Action One (implementing biosecurity); and

- two new options relating to natural regeneration after cereals (option 23) and maintenance of organic farming (option 24) are added.

Regulation 27 amends Schedule 3 to the 2008 Regulations to insert a reference to the Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008.

Regulation 28 makes a saving provision.

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

SCOTTISH STATUTORY INSTRUMENTS

2011 No. 106

AGRICULTURE

**The Rural Development Contracts (Rural Priorities) (Scotland)
Amendment Regulations 2011**

Made - - - - *14th February 2011*

Laid before the Scottish Parliament *17th February 2011*

Coming into force - - *15th March 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Rural Development Contracts (Rural Priorities) (Scotland) Amendment Regulations 2011 and come into force on 15th March 2011.

(2) In these Regulations “the principal Regulations” means the Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008(b).

Amendment to the principal Regulations

2. The principal Regulations are amended in accordance with regulations 3 to 58.

Amendment to regulation 2

3. In regulation 2 (interpretation)—

(a) for the definition of “area related options” substitute—

““area related options” means those rural priorities options numbered 15 to 57, 60, 61 and 78 to 80 in Part 1 of Schedule 2;”;

(b) omit the definition of “Commission Regulation 796/2004”;

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) S.S.I. 2008/100 as amended by S.S.I. 2008/233, 2009/1, 2009/233, 2009/335, 2009/411, 2010/87, 2010/222 and 2010/322.

- (c) for the definition of “Commission Regulation 1975/2006” substitute—
 - ““Commission Regulation 1122/2009” means Commission Regulation (EC) No 1122/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector(a);
 - “Commission Regulation 65/2011” means Commission Regulation (EU) No 65/2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures(b);”;
- (d) for the definition of “IACS Regulations” substitute—
 - ““IACS Regulations” means the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009(c);”;
- (e) omit the definition of “IACS year”; and
- (f) in the definition of “single application”, for “Commission Regulation 796/2004” substitute “Commission Regulation 1122/2009”.

Amendment to regulation 7

4. In regulation 7 (eligible land), in paragraph (1)(a)(i) and in paragraph (2) for “Commission Regulation 796/2004” substitute “Commission Regulation 1122/2009”.

Amendment to regulation 9

- 5.** In regulation 9 (undertakings)—
- (a) in paragraphs (5) and (6), for “and 74 to 77” substitute “, 79 and 80”; and
 - (b) in paragraph (6), after “an activity or activities under any of the” insert “following three”.

Amendment to regulation 10

6. In regulation 10 (restrictions on approval of applications and payment of aid), in paragraph (2)(c) for “Articles 18, 23 or 31 of Commission Regulation 1975/2006” substitute “Article 18, 21 or 30 of Commission Regulation 65/2011”.

Amendment to regulation 12

- 7.** In regulation 12 (claims and payment)—
- (a) in paragraph (3)(a), omit “except those area related options numbered 74 to 77”;
 - (b) in paragraph (3)(a), for head (i) substitute—
 - “(i) be submitted in accordance with the deadline for single applications as specified in regulation 5 of the IACS Regulations in the calendar year in which the particular undertaking commences;”;

(a) O.J. L 316, 2.12.2009, p.65 as amended by Commission Regulation (EU) No 146/2010, O.J. L 47, 24.2.2010, p. 1.
 (b) O.J. L 25, 28.1.2011, p.8.
 (c) S.I. 2009/3263.

- (c) in paragraph (3)(a)(ii) and (iii), for “Commission Regulation 796/2004” substitute “Commission Regulation 1122/2009”.

Amendment to regulation 14

8. In regulation 14 (powers of authorised persons) in paragraph (2)(d) for “Commission Regulation 1975/2996” substitute “Commission Regulation 65/2011”.

Amendment to regulation 15

9. In regulation 15 (breaches of undertakings etc.), in paragraph (1)(c) for “Commission Regulation 1975/2006” substitute “Commission Regulation 65/2011”.

Amendment to regulation 16

10. In regulation 16 (other cases in which recovery etc. powers apply), in sub-paragraph (e) for “Commission Regulation 1975/2006” substitute “Commission Regulation 65/2011”.

Amendment to regulation 17

11. In regulation 17 (powers of recovery etc. of the Scottish Ministers), in paragraph 4 for “Council Regulation 1975/2006” substitute “Commission Regulation 65/2011”.

Amendment to Schedule 1

12. In Schedule 1 (interpretation of schedules)—

- (a) for the definition of “coastal heath” substitute—

““coastal heath” means land bordering the sea and containing heath or species-rich grassland, where salt spray and exposure affect the composition of species and the structure of vegetation;”;

- (b) in the definition of “fully organic” omit “and the Organic Standards Compendium”;

- (c) for the definition of “Less Favoured Area” substitute—

““Less Favoured Area” has the meaning as in regulation 2(1) of the Less Favoured Area Support Scheme (Scotland) Regulations 2010(a);”;

- (d) for the definition of “Nitrates Action Programme” substitute—

““Nitrates Action Programme” means the action programme set out in the Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008(b);”;

- (e) in the definition of “organic production” omit “as read with any additional provisions as set out in the Organic Standards Compendium”;

- (f) omit the definition of “Organic Standards Compendium”;

- (g) for the definition of “rural settlement” substitute—

““rural settlement” means a settlement which has a population of less than 3000 according to the Scottish Executive Urban Rural Classifications 2003-2004, 2005-2006 or Scottish Government Urban Rural Classifications 2007-2008 or 2009-2010;”;

(a) S.S.I. 2010/273 as amended by S.S.I. 2011/73.

(b) S.S.I. 2008/298, as amended by S.S.I. 2008/394 and 2009/447.

- (h) after the definition of “SEPA” insert—
““serpentine vegetation” means unimproved grassland with serpentine or other ultra-basic rocks, containing species which can tolerate the unusual soils derived from these rocks;”;
- (i) after the definition of “SPA” insert—
““special interest heath” means land containing heath in an SSSI Site or in a SAC or SPA or on a site which SNH has confirmed to be of particular local importance in accordance with programme guidance;”;
- (j) after the definition of “wetland”, insert—
““winter keep” means the production of oats, barley, rye, bere, turnips, kale and hay;”.

Amendment to Part 1 of Schedule 2

13. Part 1 (option, activities and eligibility conditions and rates of payment) of Schedule 2 (rural priorities options) is amended in accordance with regulations 14 to 54.

Amendment to option 10 (improving the economic value of forests)

14. In option 10 (improving the economic value of forests), in column 2—

- (a) in paragraph (1) for sub-paragraph (a) substitute—
““(a) has a forest holding of at least one hectare, which is managed in accordance with a forest management plan which is in compliance with the UK Forestry Standard and approved by the Forestry Commission Scotland;” and
- (b) in paragraph (1)(c) for head (iii) substitute—
““(iii) thinning to improve average stem quality;”.

Amendment to option 15 (conversion to and maintenance of organic farming)

15. In option 15 (conversion to and maintenance of organic farming)—

- (a) under heading A (conversion of land to organic production) in paragraph 2(d) omit “and the Organic Standards Compendium”;
- (b) under heading C (maintenance of organic production) in paragraph 2(b) omit “and the Organic Standards Compendium”; and
- (c) for the entry in column 3 substitute—
““As set out in Table A in Part 2 of this Schedule”.

Amendment to option 16 (wild bird seed mix/unharvested crop)

16. In option 16 (wild bird seed mix/unharvested crop), in column 2 for paragraph (3) substitute—

- “(3) For both options (a) and (b) in paragraph (2) above—
 - (a) plots must be on arable or improved grassland and maximum of 2 hectares in size;
 - (b) pesticides must not be applied except where the application is necessary to aid the establishment of the crop or with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species; and
 - (c) beneficiaries need not manage the same field each year, but must give details of the different fields and their locations and their areas in the application for aid. If, during the relevant period, a different rotation to that originally approved is agreed with the Scottish Ministers, the area upon which the annual management payment

is calculated will be restricted to either the originally approved area or the revised area, whichever is smaller.”.

Amendment to option 17 (management of mown grassland for wildlife)

17. In option 17 (management of mown grassland for wildlife), in column 2—

- (a) at the end of paragraph (2)(a), insert “; for beneficiaries in Shetland the exclusion period may start any time between 1st and 30th April and last for three months from the start date”;
- (b) in paragraph (2)(e) omit “and herbicides may be applied to this strip only with the prior written agreement of the Scottish Ministers”;
- (c) in paragraph (2)(f), after “strip” insert “except with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species”;
- (d) at the end of paragraph (2)(f) omit “and” ; and
- (e) in paragraph (2), after sub-paragraph (g), insert—
“; and
- (h) does not apply slurry or farmyard manure to the field from 1st March until 15th May, or until 1st June where later ground-nesting birds and young may be found.”.

Amendment to option 18 (management of mown grassland for corn buntings)

18. In option 18 (management of mown grassland for corn buntings)—

- (a) in column 2, in paragraph (2) for sub-paragraph (c) substitute—
“(c) mows fields but mowing must be delayed until after—
 - (i) 24th July; in which case the rate of payment for Option 1 applies, or
 - (ii) 1st August where corncrakes are also present; in which case the rate of payment for Option 2 applies;”;
- (b) in column 2, in paragraph (2)(f), after “strip” insert “except with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species”;
- (c) in column 2, after paragraph (2), insert—
“(3) Beneficiaries need not manage the same field each year where winter keep production is rotated around grassland area, but must give details of the different fields and their locations and their areas in the application for aid. If, during the relevant period, a different rotation to that originally approved is agreed with the Scottish Ministers, the area upon which the annual management payment is calculated will be restricted to either the originally approved area or the revised area, whichever is smaller.”; and
- (d) in column 3, for “£224.48 per hectare per year” substitute “Option 1 - £216 per hectare per year. Option 2 – £ 224.48 per hectare per year.”.

Amendment to option 19 (management of mown grassland for corncrakes)

19. In option 19 (management of mown grassland for corncrakes)—

- (a) in column 1, after “corncrakes” insert “or chough”;

(b) in column 2, for paragraphs (2) and (3) substitute—

“(2) For the management of mown grassland for the benefit of corncrakes, a beneficiary is eligible for payment under this option on a grassland field on which an extensive crop of hay or silage will be grown if the beneficiary—

- (a) is a land manager in the Argyll Islands, Skye, Small Isles, Western Isles, Orkney or parts of the north coast of the Scottish Mainland which support corncrake populations;
- (b) carries out this option in combination with one of the following rural priorities options, which must be undertaken on directly adjacent land—
 - (i) Management of early and late cover for corncrakes;
 - (ii) Creation and management of early and late cover for corncrakes;
 - (iii) Management of grazed grassland for corncrakes; or
 - (iv) Wild bird seed mix/unharvested crop;
- (c) excludes livestock from hay or silage fields from 15th May;
- (d) does not roll, harrow or graze the field from 15th May until after it has been mown and marks and avoids ground nests which were present before 15th May;
- (e) provides suitable temporary cover for at least two weeks after the field has been mown to enable corncrakes to move into more permanent corncrake cover;
- (f) makes the temporary cover—
 - (i) directly adjacent to permanent corncrake cover; and
 - (ii) at least 2 metres wide around the field boundary, except where the field is less than 40 metres wide where temporary cover may be provided on one side of the field only; and
- (g) does not apply pesticides to the temporary cover.

(3) For the management of mown grassland for the benefit of chough, a beneficiary is eligible for payment under this option for farm land on in-bye rotational grassland, permanent grassland and pastures dominated by a variety of grassland types that are maintained by seasonal or year round grazing if the beneficiary—

- (a) is a land manager in the Argyll Islands or in Wigtownshire where chough occur;
- (b) provides areas suitable for chough to forage in during chick rearing and fledging periods by grazing pasture until 14th June and then excludes livestock from hay or silage fields from 15th June; and
- (c) does not roll, harrow or graze the field from 15th June until after it has been mown, which must not be before 15th August, and marks and avoids ground nests which are present before 15th June.

(4) For the management of mown grassland for the benefit of either corncrakes or chough, a beneficiary must—

- (a) cut the grassland fields after—
 - (i) 1st August in the case of corncrakes, in which case the rate of payment for Option 1 in column 3 applies;
 - (ii) 15th August, in which case the rate of payment for Option 2 in column 3 applies; or
 - (iii) 1st September in which case the rate of payment for Option 3 in column 3 applies;
- (b) cut the hay and silage in a wildlife friendly manner in accordance with programme guidance;
- (c) leave a strip of uncut grass 2 metres wide around the field boundary; and

- (d) not apply pesticides to the 2 metre strip except with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species.

(5) The same field need not be managed each year if winter keep production is rotated around grassland area. Details of the fields to be rotated in this way, their location and areas must be given in the application for aid. If, during the relevant period, a different rotation to that originally agreed is approved by the Scottish Ministers, the area upon which the annual management payment is calculated will be restricted to either the area originally approved or the revised area, whichever is smaller.”; and

- (c) for column 3, substitute—

“For corncrakes—

Option 1 - £271 per hectare per year.

Option 2 - £381 per hectare per year.

Option 3 - £691 per hectare per year.

For chough—

Option 2 - £429 per hectare per year.

Option 3 - £691 per hectare per year.”.

Amendment to option 21 (creation and management of early and late cover for corncrakes)

20. In option 21 (creation and management of early and late cover for corncrakes), in column 2—

- (a) at the end of paragraph (2)(e), omit “and”; and
- (b) at end of paragraph (2)(f), insert—
“; and
- (g) does not apply pesticides to the managed area except with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species.”.

Amendment to option 22 (management of early and late cover for corncrakes)

21. In option 22 (management of early and late cover for corncrakes), in column 2—

- (a) in paragraph (2), for “and parts of the North Sutherland and West Argyll coast” substitute “North Sutherland and West Argyll”;
- (b) at the end of paragraph (2)(d), omit “and”; and
- (c) at the end of paragraph (2)(e), insert—
“; and
- (f) does not apply pesticides to the managed area except with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species.”.

Amendment to option 23 (management of open grazed or wet grassland for wildlife)

22. In option 23 (management of open grazed or wet grassland for wildlife), in column 2, for paragraph (2) substitute—

“(2) A beneficiary is eligible for payment under this option on in-bye grassland if the beneficiary either—

- (a) agrees a grazing plan with the Scottish Ministers that describes a livestock management and grazing regime, taking into account the preferences of individual target species, site conditions and farming operations; or

- (b) excludes farm livestock for 6 consecutive weeks between 15th March and 15th June inclusive or restricts numbers to a maximum of 1 livestock unit per hectare during the whole period of three months.
- (3) The beneficiary must—
 - (a) ensure the intensity of grazing is sufficiently low during the period of three months so that the nests of ground-nesting birds are not damaged;
 - (b) not harrow or roll from 1st April until 31st July inclusive;
 - (c) not apply artificial fertiliser to the site before 15th May and not apply farmyard manure and slurry from 1st March until 15th May inclusive;
 - (d) not apply pesticides except with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species and where land is wetland or bordering water, the beneficiary must also consult SEPA prior to the application of pesticides; and
 - (e) not top until after 31st July.
- (4) Where this option seeks to benefit farmland waders, the area managed must extend to at least 3 hectares and be at least 30 metres from any line or group of trees or hedgerows.
- (5) Where open grazed grassland is part of the normal rotation, the same field need not be managed each year if winter keep production is rotated around the grassland area. Details of the fields to be rotated in this way, their location and areas must be given in the application for aid. If, during the lifetime of the undertaking, a different rotation to that originally agreed is approved by the Scottish Ministers, the area upon which the annual management payment is calculated will be restricted to either the area originally approved or the revised area, whichever is smaller.”.

Amendment to option 24 (mammal and bird control)

23. In option 24 (mammal and bird control)—

- (a) in column 2, in paragraph (3)B after “SNH” insert “or, if the beneficiary is committed to provide food for hen harriers in the nest under option 25 (supplementary food provision for raptors), on a site within 2 km of a hen harrier nest”;
- (b) in column 2, in paragraph (3)(a), for head (ii) substitute—
 - “(i) as support of the hen harriers’ element of the supplementary food provisions for raptors option only for the duration of that undertaking”; and
- (c) in column 3, at paragraph B, after “1 trap per hectare” insert “or per hen harrier nest site when used to support the hen harriers’ element of option 25”.

Amendment to option 25 (supplementary food provision for raptors)

24. In option 25 (supplementary food provision for raptors)—

- (a) in column 2, in paragraph (3), for sub-paragraph (a) substitute—
 - “(a) is a land manager of moorland which has breeding hen harriers;”;
- (b) in column 2, in paragraph (3)(c), for ““Substitute Feeding of Hen Harriers on Grouse Moors” (Moorland Working Group 1999)” substitute ““Diversionary Feeding of Hen Harriers on Grouse Moors” (Scottish Natural Heritage 2004)(a)”;

(a) Diversionary Feeding of Hen Harriers on Grouse Moors was published by SNH and is available online at www.snh.org.uk or by contacting Great Glen House, Leachkin Road, Inverness, IV3 8NW.

- (c) in column 2, at the end of paragraph (3)(g) insert—
“; and
- (h) continues crow control on site.”; and
- (d) in column 3, for “A: £1,076 per nest per year. B. £32 per carcass.” substitute—

“A: £1,076 per nest per year and no more than one feeding site per five hectares.
B: £32 per carcass up to eight carcasses per year and no more than one carcass per hectare.”

Omission of option 26 (wardening for Golden Eagles)

25. Omit the whole of option 26 (wardening for Golden Eagles).

Amendment to option 27 (control of invasive non-native species)

26. In option 27 (control of invasive non-native species), in column 2, in paragraph (8) for sub-paragraphs (i) and (ii) (where it occurs a second time) substitute—

- “(i) mechanised control – these methods may include the use of flails fitted on machinery and/or herbicide treatment on re-growth. A second application of herbicide must be applied when required; or
- (ii) chemical control of standing Rhododendron – this may include the use of stem injection or foliar application of herbicide to kill off established Rhododendron bushes. Follow-up applications of herbicides or hand pulling of seedlings must be undertaken to ensure there are no successful seedlings or sprouting bushes on site.”.

Amendment to option 28 (management of species rich grassland)

27. In option 28 (management of species rich grassland), in column 2, in paragraph (2) for sub-paragraphs (f) and (g) substitute—

- “(f) does not apply fertilisers, slurry, farmyard manure or lime;
- (g) does not apply pesticides except with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species; and
- (h) does not use the site for supplementary feeding.”.

Amendment to option 30 (creation and management of species rich grassland)

28. In option 30 (creation and management of species rich grassland)—

- (a) in column 2, for paragraphs (2) and (3), substitute—
“(2) There are two elements to this option—
A. for the benefit of wildlife;
B. for the benefit of bees, moths and butterflies.
- (3) A beneficiary is eligible for payment under this option if the beneficiary—
(a) creates a new grassland sward from arable or improved grassland by—
(i) destroying any existing grassland cover and carrying out a programme agreed with the Scottish Ministers to establish a new sward. This may include measures to reduce the fertility of the soil and address weed problems; and

- (ii) sowing the site with a low productivity grass and herb mix seed agreed with Scottish Ministers to create a new sward; or
- (b) restores an existing semi-improved grassland sward by—
 - (i) creating a short sward through cutting or grazing;
 - (ii) creating 50% bare ground on each sward by light mechanical disturbance such as raking, harrowing or scarifying; and
 - (iii) sowing a low productivity grass and herb mix seed agreed with Scottish Ministers on the bare patches.
- (4) When destroying grassland cover on an archaeological cropmark site, ploughing and cultivation must not exceed 150 mm.
- (5) There must be at least three indicator species of potential for restoration on grasslands.
- (6) The beneficiary must agree with the Scottish Ministers a grazing plan setting out a livestock management and grazing regime.
- (7) For element A, the beneficiary must ensure that the grass is at its longest in the summer and shorter in the spring and autumn.
- (8) For element B—
 - (a) grazing levels between June and August must be light to maintain an uneven patchwork of short and tall vegetation between 5 and 25 cm with flowering heads;
 - (b) beneficiaries must leave at least 15% of the field uncut and must rotate this area annually; and
 - (c) the sward must not be cut before 15th August except in areas where Great Yellow Bumblebee is a priority where it must not be cut before 1st September.
- (9) The beneficiary must sow a seed mixture of native grasses and wildflowers where at least 15% of the mixture by weight must be seed of herbs and up to 85% non-aggressive fine-leaved grasses.
- (10) Seed of local origin must be used wherever possible.
- (11) For element B at least half the herb seed by weight must consist of one or more of the following species: Red Clover, Tufted Vetch, Bird's foot Trefoil, Yellow Rattle, Meadow Vetchling, Selfheal and Common Knapweed; and must contain at least 2% Red Clover seeds.
- (12) The beneficiary must not—
 - (a) apply fertiliser, slurry or farmyard manure to the site;
 - (b) apply pesticides to the site except with the prior written agreement of the Scottish Ministers for activities such as spot treatment for injurious weeds or control of invasive non-native species;
 - (c) carry out supplementary feeding on the site.”; and
- (b) in column 3, for “year” insert “year or £245.56 per hectare per year on archaeological cropmark sites”.

Amendment to option 31 (management of habitat mosaics)

29. In option 31 (management of habitat mosaics), in column 2—

- (a) in paragraph (2), for sub-paragraph (b) substitute—
 - “(b) does not apply fertilisers, slurry, farmyard manure or lime;” and
- (b) at the end of paragraph (2)(c), insert—
 - “; and
- (d) does not apply pesticides except with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species.”.

Amendment to option 32 (management of wetland)

30. In option 32 (management of wetland), in column 2, in paragraph (2)—

- (a) for “including salt marsh” substitute “or on salt marsh”;
- (b) for sub-paragraph (b) substitute—
 - “(b) does not apply fertiliser including slurry or farmyard manure to the site;”;
- (c) at the end of sub-paragraph (m), omit “and”; and
- (d) at the end of sub-paragraph (n), insert—
 - “; and
- (o) does not apply pesticides to the site except with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species.”.

Amendment to option 33 (creation, restoration and management of wetland)

31. In option 33 (creation, restoration and management of wetland), in column 2, in paragraph (3)—

- (a) in sub-paragraph (i), omit “pesticides or”; and
- (b) at the end of sub-paragraph (v), insert—
 - “; and
- (vi) not apply pesticides except in consultation with SEPA and with the prior written agreement of the Scottish Ministers for activities such as spot-treatment of injurious weeds or control of invasive non-native species.”.

Amendment to option 34 (management/restoration of lowland raised bogs)

32. In option 34 (management/restoration of lowland raised bogs), in column 2, in paragraph (2)(c)—

- (a) for head (iv) substitute—
 - “(iv) the use of fertiliser including manure, or pesticides except for herbicides;”;
- (b) at the end of head (viii), omit “and”; and
- (c) after head (ix) insert—
 - “and
- (x) the application of herbicides without consultation with SEPA and without the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native plants;”.

Amendment to option 35 (creation and management of water margins and enhanced riparian buffer areas)

33. In option 35 (creation and management of water margins and enhanced riparian buffer areas), in column 2—

- (a) in paragraph (3), omit “with a bed width of at least 0.6 metres”;
- (b) in paragraph (3)(b), for “a maximum width of 12 metres” substitute “has a width of between 3 and 12 metres on any side”;
- (c) in paragraph (4), for sub-paragraph (b) substitute—
 - “(b) enhance biodiversity interest by—
- (i) on sites with species-rich grassland, carrying out very occasional, light grazing to maintain a sward at a range of heights, avoiding poaching the ground, and controlling rank, tussocky growth and maintaining close, even

- sward by grazing in late summer/early autumn to reduce the sward height to between 10 and 15 cm;
- (ii) on all other sites, carrying out a grazing regime in accordance with programme guidance;”;
- (d) in paragraph (4)(c), at the beginning insert “on a site which is identified as a high priority in a diffuse pollution mitigation plan,”;
- (e) in paragraph (4), for sub-paragraph (iii) substitute—
 - “(iii) not apply lime or fertilisers, including slurry or farmyard manure, or pesticides in or near the water margin except for herbicides which may be applied in consultation with SEPA and with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species;”;
- (f) omit paragraph (4)(iv).

Amendment to option 37 (management of buffer areas for fens and lowland raised bogs)

- 34.** In option 37 (management of buffer areas for fens and lowland raised bogs), in column 2—
- (a) in paragraph (3)(e), omit “pesticides,”;
 - (b) in paragraph (3)(f) omit “and”;
 - (c) at the end of paragraph (3)(g) insert—
 - “; and
 - (h) does not apply pesticides except in consultation with SEPA and with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species.”.

Amendment to option 38 (management of coastal or serpentine heath)

- 35.** In option 38 (management of coastal or serpentine heath)—
- (a) in column 1, for “Management of coastal or serpentine heath” substitute “Management of coastal heath, serpentine vegetation or special interest heath”; and
 - (b) in column 2, for paragraphs (2) and (3) substitute—
 - “(2) A beneficiary is eligible for payment under this option on coastal heath, serpentine vegetation or special interest heath if the beneficiary—
 - (a) on land dominated by heath vegetation, manages grazing levels to enable plants to flower and set seed in the summer. The area must be sufficiently grazed over the autumn to remove rank growth and lightly crop dwarf shrubs; and
 - (b) on land dominated by grass vegetation, manages grazing levels in accordance with programme guidance to ensure the sward is at its longest in the summer to enable plants to flower and set seed and is shorter in the spring and autumn to allow grassland species to germinate and to remove rank growth.
 - (3) For all heath types but subject to paragraph (4), the beneficiary must—
 - (a) exclude farm livestock from the area from 1st April until 31st August inclusive;
 - (b) graze livestock on the site from 1st September until 30th November inclusive at a level not exceeding 1.2 livestock units per hectare during this period; and
 - (c) where appropriate in accordance with programme guidance, ensure that, if the site is grazed from 1st December until 31st March inclusive, the grazing level does not exceed 0.15 livestock units per hectare during this period except with the prior written agreement of the Scottish Ministers.
 - (4) Where the requirements in paragraph (3) would not reflect the specific biodiversity requirements of the site in the opinion of the Scottish Ministers at the time of the application, the beneficiary must set out in a grazing plan, to be agreed with the Scottish

Ministers, a farm livestock management and grazing regime. The grazing plan may not be varied in any year of the 5 year commitment except with the prior written agreement of the Scottish Ministers.

(5) A grazing plan is obligatory when management is for Scottish primrose.

(6) For all sites, a beneficiary must—

- (a) adjust grazing management to ensure coarser grasses do not shade out desired plant species;
- (b) not provide supplementary feeding on the site without the prior written agreement of the Scottish Ministers;
- (c) not burn the site without the prior written agreement of the Scottish Ministers;
- (d) not apply fertiliser, lime, slurry or farmyard manure to the site; and
- (e) not apply pesticides to the site except for herbicides with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species.

(7) Where a site occupies only a small part or parts of the field or management unit, the whole field or management unit may be managed under the provisions of this option where the Scottish Ministers consider this would be beneficial.

(8) Extensive mosaics of heath and grassland are not eligible.”.

Amendment to option 41 (management of moorland grazing)

36. In option 41 (management of moorland grazing), in column 2, in paragraph (2)(b), for “proposed changes in” substitute “appropriate proposals for”.

Amendment to option 43 (moorland stock disposal)

37. In option 43 (moorland stock disposal), in column 3, after “year” insert “but only £15.71 per hectare per year if the beneficiary receives payment in accordance with commitments under option 41 or option 42 in this Schedule for the same land”.

Amendment to option 47 (management of hedgerows)

38. In option 47 (management of hedgerows), in column 2—

- (a) in paragraph (2)(b), after “in any one year” insert “with a different section of the hedge cut each year so that the hedge is cut in rotation”;
- (b) in paragraph (2)(f), after “established hedge” insert “except with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive, non-native species, and where the hedge is next to a watercourse, the beneficiary must also consult SEPA before applying pesticides”;
- (c) in paragraph (2), for sub-paragraph (g) substitute—
 - “(g) uses, following consultation with SEPA where the hedge is next to a watercourse, an approved herbicide for any spot treatment of weeds within 1 metre of any new hedge plant;”;
- (d) at the end of paragraph (2)(o), omit “and”; and
- (e) at the end of paragraph (2)(p) insert—
 - “; and
 - (q) maintains existing hedgerows, trees and where new hedgerow trees develop, maintains at least one tree per 200 metres of hedgerow by marking the trees and not cutting them.”.

Amendment to option 48 (management of extended hedges)

39. In option 48 (management of extended hedges)—

- (a) in column 1 for “Management of Extended Hedges” substitute “Management of extended hedges and hedgerow trees”;
- (b) in column 2, in paragraph (2), for sub-paragraph (e) substitute—
 - “(e) does not apply pesticides to the managed strip except with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species, and where the hedge is next to a watercourse, has consulted SEPA before application of the pesticides;”;
 - and
- (c) in column 2, at the end of paragraph 2(h) insert—
 - “; and
 - (i) maintains existing hedgerow trees and allows new hedgerow trees to develop at irregular intervals and maintains at least one tree per 200 metres of hedgerow by marking the trees and not cutting them.”.

Amendment to option 49 (management of grass margins and beetlebanks in arable fields)

40. In option 49 (management of grass margins and beetlebanks in arable fields)—

- (a) in column 2, in paragraph (3)(a)—
 - (i) for “6” where it appears the second time, substitute “3”; and
 - (ii) after “Kestrel” insert “, and plants at least one species of a nectar-feeding plant such as red clover if it does not exist currently on the strip”;
- (b) in column 2, in paragraph (3)(c) for “establishes the strip” substitute “where no strip currently exists, establishes a strip”;
- (c) in column 2, in paragraph (3)(d) omit “. Spot treatment of scheduled and non-native invasive weeds is permitted”;
- (d) in column 2, omit paragraph (3)(f);
- (e) in column 2, in paragraph (3)(g) after “site” insert “except with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species”;
- (f) in column 2, in paragraph (4), second sentence, for “carried out” substitute “relocated”; and
- (g) in column 3, after “per year” insert “for establishment and management of a strip and £407.92 per hectare per year for management of an existing strip”.

Amendment to option 50 (bio-diversity cropping on in-bye)

41. In option 50 (bio-diversity cropping on in-bye), in column 2, in paragraph (2)—

- (a) omit sub-paragraph (c); and
- (b) in sub-paragraph (d), after “site” insert “except with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species”.

Amendment to option 51 (management of cropped machair)

42. In option 51 (management of cropped machair)—

- (a) in column 2, in paragraph (2)(a), after “fallow” insert “and the site may be sown to an arable crop for up to two consecutive years”;

- (b) in column 2, in paragraph (2)(b), after “crop” insert “in the second year (where it applies)”;
- (c) in column 2, in paragraph (2) for sub-paragraph (d) substitute—
 - “(d) does not cultivate to a depth of more than 150 millimetres and where cultivation does not exceed 100 millimetres, a supplementary premium will be paid;”;
- (d) in column 2, omit paragraph (2)(e);
- (e) in column 2, paragraph (2)(f) after “site” insert “except with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species”;
- (f) in column 2, after paragraph (3) insert—
 - “(4) Where the area has been managed as cropped machair under a previous agri-environment scheme, annual payments will be made in arrears across the whole area of cropped machair (whether in crop or laying fallow) from the first year.
 - (5) Otherwise, annual payments may commence at the end of the year in which the site is first sown down to spring crop, then annually thereafter for the balance of the five year undertaking.”; and
- (g) in column 3, after “stacks, per hectare per year” insert “, £31 per hectare per year supplement when all ploughing is undertaken by a shallow cultivation depth of 100 millimetres, and £41 supplement per beneficiary per year when sharing equipment for shallow cultivation.”.

Amendment to option 52 (management of ancient wood pasture)

43. In option 52 (management of ancient wood pasture), in column 2—

- (a) in paragraph (4)(a), for sub-paragraph (aa) substitute—
 - “(aa) not apply lime, artificial fertiliser, farmyard manure or slurry to the site;”;
- (b) in paragraph (4)(a), after sub-paragraph (gg) insert—
 - “(hh) not apply pesticides except with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species;”;
- (c) in paragraph (4)(b), for sub-paragraph (i) substitute—
 - “(i) does not apply lime, artificial fertiliser, farmyard manure or slurry to the site;”;
- (d) at the end of paragraph (4)(b)(vi), omit “and”; and
- (e) at the end of paragraph (4)(b)(vii), insert—
 - “; and
 - (viii) does not apply pesticides except with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species.”.

Amendment to option 53 (management of scrub and tall herb communities)

44. In option 53 (management of scrub and tall herb communities), in column 2, in paragraph (2)(g), after “site” insert “except for herbicides which may be applied with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species”.

Amendment to option 54 (arable reversion to grassland)

45. In option 54 (arable reversion to grassland)—

- (a) in column 2, in paragraph (2)—
 - (i) for sub-paragraph (a) substitute—

“(a) identifies risk areas through either a specialist diffuse pollution audit or a soil and water management plan; and”;
 - (ii) in sub-paragraph (b), after “when the grass sward is established” insert “either under a previous agri-environment scheme or because the beneficiary converts fields (or areas within fields) that are prone to flooding, runoff or erosion risk from arable farming to grassland by sowing a suitable mix of grass seed and addressing any areas of soil compaction before seed is sown”; and
 - (iii) in sub-paragraph (b)(iii), for “approval of Scottish Ministers” substitute “written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species”; and
- (b) in column 3 for “250 per hectare per year.” substitute “For conversion and management of grassland £240.74 per hectare per year and for management only £207 per hectare per year.”.

Amendment to option 60 (woodland creation)

46. In option 60 (woodland creation)—

- (a) in paragraph (2)(a)(iv), after “woodland” insert “(other than such woodland in the Northern and Western Isles)”;
- (b) in paragraph (2)(a)(vi), after “woodland” insert “(other than such woodland in Central Scotland); and
- (c) after paragraph (2)(a)(vi) insert—
 - “(vii) native woodland in the Northern and Western Isles;
 - “(viii) mixed conifer/broadleaved woodland in Central Scotland.”.

Amendment to option 61 (sustainable management of forests and woodlands)

47. In option 61 (sustainable management of forests and woodlands), in paragraph (2)(a) after “forest” insert “management”.

Amendment to option 66 (information and awareness raising)

48. In option 66 (information and awareness raising)—

- (a) in column 2, in paragraph (1)(a)(iii) for “the public” and substitute “users of all abilities”;
- (b) in column 2, in paragraph (1) for sub-paragraph (f) substitute—

“(f) submits two quotes based on actual costs for each capital item. Where the item can only be supplied by one supplier, one quote is sufficient.”;
- (c) after paragraph (1) insert—
 - “(2) The beneficiary is eligible for different capital items in each year of the undertaking.
 - “(3) This is a five year commitment.”; and
- (d) in column 3, for the existing words substitute—

“Up to 100% of actual costs for capital items up to a maximum of £10,000 for publications and other media and £50,000 for panels/trails/signage. There is no maximum limit for improvements of accessibility for users of all abilities.”.

Amendment to option 70 (active management to improve the condition of vernacular rural buildings, archaeological or historic sites and historic landscapes)

49. In option 70 (active management to improve the condition of vernacular rural buildings, archaeological or historic sites and historic landscapes)—

- (a) in column 2—
 - (i) in paragraph (1)(a), omit “and subsequently monitors and manages the improved sites”;
 - (ii) in paragraph (1), for sub-paragraph (b) substitute—

“(b) carries out a programme of specified repair to conserve and enhance the historic fabric of pre 1940 vernacular buildings, excluding buildings designated as scheduled monuments under the Ancient Monuments and Archaeological Areas Act 1979(a).”;
 - (iii) in paragraph (2)(a)(i), after “managed” insert “and the location of works and capital items proposed, supported by annotated photographic documentation”;
 - (iv) in paragraph (2)(a), for head (ii) substitute—

“(ii) keep a photographic record of each site before management commences and then after the first year, three years and five years of the management of the site; and;”;
 - (v) omit paragraph (2)(b)(iii);
 - (vi) in paragraph (2)(b)(iv), after “visible features on site” insert “unless the beneficiary has obtained written confirmation from the local authority that a reduced distance is appropriate”;
 - (vii) in paragraph (2)(b)(v), after “reseeding” insert “for which archaeological supervision by a qualified and competent person working to the Institute For Archaeologists (IFA) standard or similar recognised standard for archaeological work in the UK is required unless the beneficiary has obtained written confirmation from Historic Scotland, in the case of scheduled monuments, or the local authority, in the case of unscheduled sites, that supervision is not required”;
 - (viii) in paragraph (2)(b), for head (vi) substitute—

“(vi) on the basis of specialist advice, consolidation of masonry in ruined buildings including vegetation removal. Work must be restricted to the minimum level of intervention required to prevent further deterioration;”;
 - (ix) in paragraph (2)(b)(vii), after “historic sites” insert “for which archaeological supervision by a qualified and competent person working to the Institute For Archaeologists (IFA) standard or similar recognised standard for archaeological work in the UK is required unless the beneficiary has obtained written confirmation from Historic Scotland, in the case of scheduled monuments, or the local authority, in the case of unscheduled sites, that supervision is not required”;
 - (x) in paragraph (2), for sub-paragraph (c) substitute—

“(c) a beneficiary must submit receipted invoices in support of payment claims. Works associated with the requirements of the Waste Management Licensing Regulations 1994(b) are ineligible for funding.”;

(a) 1979 c.46.

(b) S.I. 1994/1055, as relevantly amended by S.I. 1994/1137, 1995/288 and 1950, 1996/593, 634, 916, 972, 973 and 1279, 1997/2203, 1998/606 and 2746, and S.S.I. 2000/323 and 235, 2003/170, 171 and 593, 2004/275, 2005/22, 2006/128 and 541, 2007/172 and 251.

- (xi) in paragraph (3)(a)—
 - (aa) at the end of head (i), omit “and”; and
 - (bb) at the end of head (ii) insert—
 - “and
 - (iii) submit a map or sketch detailing the precise location of the building to be repaired together with any relevant drawings or plans, supported by annotated photographic documentation showing location of works and capital items proposed;”;
- (xii) in paragraph (3), for sub-paragraph (b) substitute—
 - “(b) a beneficiary is eligible for payment if the beneficiary—
 - (i) carries out repairs on the historic fabric of the building on a like-for-like basis or the re-instatement of original or historic feature or materials; at least 75% of the walls of the building must survive to the wallhead; and
 - (ii) submits receipted invoices in support of payment claims; specialist fees, including architects’ and engineers’ fees, are eligible for payment;”;
- (xiii) in paragraph (3), for sub-paragraph (c) substitute—
 - “(c) for five years after the beneficiary has received payment—
 - (i) the buildings, sites or landscapes, for which works have been funded under this option, must be maintained and not modified or sold; and
 - (ii) the buildings must not be used for human residential habitation; and
 - (d) this option can be undertaken with other rural priorities options if this does not result in the loss or modification of the historic fabric of the building or the unnecessary loss of original internal fixtures.”; and
- (b) in column 3—
 - (i) for “at 100%” substitute “up to 100%”;
 - (ii) for “at 75%” substitute “up to 75%”; and
 - (iii) after “project costs incurred.” insert—
 - “For options (a) and (b), specialist fees and statutory consents fees up to a maximum of 12% of the overall project costs.”.

Amendment to option 74 (removal of vegetation/debris from SSSI sites notified for their geological features)

50. In option 74 (removal of vegetation/debris from SSSI Sites notified for their geological features), in column 2 omit paragraph (4).

Amendment to option 75 (erosion control)

51. In option 75 (erosion control), in column 2 omit paragraph (4).

Amendment to option 77 (capital works required for SSSI and European Site features which enhance the public amenity value of those features)

52. In option 77 (capital works required for SSSI and European Site features which enhance the public amenity value of those features), in column 2 omit paragraph (4).

Amendment to option 78 (controlled livestock grazing of woodland)

53. In option 78 (controlled livestock grazing of woodland), in column 2—

- (a) in paragraph (2), for sub-paragraph (a) substitute—
“(a) has an area of native woodland of at least five hectares; or”;
- (b) in paragraph (2)(b), omit “semi-natural”; and
- (c) at the end of paragraph (2)(c), for “; and” substitute—
“; or
- (d) has an area of non-native woodlands where woodland grazing would benefit specific species such as black grouse; and”.

Insertion of options 79 to 81

54. After option 78 (controlled livestock grazing of woodland), insert the options set out in columns 1, 2 and 3, of Schedule 1 to these Regulations.

Amendment to Part 2 of Schedule 2

55. In Schedule 2 (rural priorities options), Part 2—

- (a) in Table B, at the end insert—

| | | | |
|--------------------------------------------------------|------|-----------------------------------------------------------------------------------------------|--------------------------------------------|
| “Native woodland in the Northern and Western Isles | 0.25 | - at least 60% native species - up to 15% mixed broadleaved - up to 25% open ground | 3000 |
| Mixed conifer/broadleaved woodland in Central Scotland | 0.25 | - up to 20% mixed conifer species - up to 80% mixed broadleaved - up to 20% open ground | Conifers – 2500 Broadleaved - 2100 ” |

- (b) in Table C, at the end insert—

| | | |
|--------------------------------------------------------|------|------|
| “Native woodland in the Northern and Western Isles | 5200 | 360 |
| Mixed conifer/broadleaved woodland in Central Scotland | 5000 | 300” |

- (c) for Table D (Standard Cost For Forestry Operations/Capital Items) substitute the table set out in Schedule 2 to these Regulations; and
- (d) in Table E (Actual Cost Capital Items) for the text in the first column (item column)—
 - (i) in the first row, substitute “Capital works for SSSI Sites (which are high nature value areas) and European sites, which enhance the public amenity value of these features”; and
 - (ii) in the second row, substitute “Control of rhododendron in geographical areas covered by a regional control strategy for this invasive non-native species in all native and ancient woodlands and in woodlands affected by *Phytophthora ramorum* (P. ramorum)”.

Amendment to Table A in Schedule 3

56. In Table A in Schedule 3 (standard payment rates for capital items)—

(a) for the entry relating to “Manual eradication of rhododendron” substitute—

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
| “Manual eradication of rhododendron: Light infestation/easy access (Bushes < 1.5 metres and flat site < 15 degrees) | £4,500 per hectare of infested land |
| Medium infestation/access (Bushes > 1.5 metres and flat site < 15 degrees; bushes < 1.5 metres and slight slope > 15 degrees; or bushes > 1.5 metres and slight slope > 15 degrees) | £6,100 per hectare of infested land |
| Difficult access (Bushes < 1.5 metres and steep slope > 30 degrees; or bushes > 1.5 metres and steep slope > 30 degrees) | £9,500 per hectare of infested land ” |

(b) for the entry relating to “Mechanised (and/or chemical eradication of rhododendron” substitute—

| | |
|---------------------------------------------------------------------------|------------------------------------------|
| “Mechanised eradication of rhododendron: Light infestation/easy access | £1,800 per hectare of infested land |
| Medium infestation/access | £2,400 per hectare of infested land |
| Difficult access | £2,900 per hectare of infested land |
| Chemical eradication of rhododendron by foliar or stem injection | £1,500 per hectare of infested land ” |

(c) in column 1 (capital item) for “Heather restoration (in black grouse core areas)” substitute “Heather management (in black grouse and/ or capercaillie core areas)”; and

(d) at the end of the table insert the following entry—

| | |
|----------------------------------|-----------------------------------------------|
| “Vole guard/small tree protector | £0.23 per vole guard/small tree protector ” |
|----------------------------------|-----------------------------------------------|

Amendment to Table B in Schedule 3

57. In Table B in Schedule 3 (eligible capital items available through capital item option 77)—

(a) in the entry relating to “Manual eradication of rhododendron”, in column 2 (maximum actual cost), for “£7,000” substitute “£14,250”; and

(b) for the entry relating to “Mechanised (and/or chemical) eradication of rhododendron” substitute the following entries—

| | |
|---------------------------------------------------------------------|------------------------------------------------|
| “Mechanised eradication of rhododendron | Up to £4,350 per hectare of infested land |
| Chemical eradication of rhododendron by foliar or stem injection | Up to £2,250 per hectare of infested land ” |

Amendment to Schedule 4

58. In Schedule 4, Part 2 (secondary legislation)—

(a) omit “The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2003”; and

(b) insert at the end—

“The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008(a).”.

Savings provision

59. In respect of a claim for payment made before 1st January 2011, the principal Regulations continue to have effect as if the amendments made by regulations 3, 6, 8 to 11 had not been made.

St Andrew’s House,
Edinburgh
14th February 2011

RICHARD LOCHHEAD
A member of the Scottish Executive

(a) S.S.I. 2008/298, as amended by S.S.I. 2008/394 and 2009/447.

SCHEDULE 1

Regulation 54

INSERTION OF OPTIONS 79 TO 81 IN PART 1 OF SCHEDULE 2 TO THE PRINCIPAL REGULATIONS

| <i>Column 1 Option</i> | <i>Column 2 Activity and eligibility conditions</i> | <i>Column 3 Rate of payment</i> |
|-----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 79. Creation and management of grassland for hen harriers | <p>(1) This is a 5 year commitment.</p> <p>(2) There are two elements to this option (A and B) to support hen harriers breeding in Special Protection Areas and Sites of Special Scientific Interest:—</p> <p>A: Creation and management of rough grassland for hen harriers—</p> <p>(a) Creation and management of rough grassland on arable land;</p> <p>(b) Creation and management of rough grassland on improved grassland;</p> <p>(c) Creation or management of rough grassland on unimproved grass; and</p> <p>B: Creation and management of rough habitats for hen harriers.</p> <p>(3) For both elements A and B, a beneficiary is eligible for payment under this option if the beneficiary—</p> <p>(a) provides forage areas for hen harriers, within two kilometres of known hen harrier nest sites;</p> <p>(b) ensures that a dense cover of grass and other plants is created within the forage areas;</p> <p>(c) agrees with the Scottish Ministers a livestock management and grazing plan;</p> <p>(d) unless otherwise agreed with the Scottish Ministers, manages grassland with nil or light grazing with up to 0.15 livestock units per hectare from 1st May to 30th September, to produce a dense cover of grass and thatch for voles to live in;</p> | <p>For A(a) £256 per hectare per year</p> <p>For A(b) £208 per hectare per year</p> <p>For A(c) £124 per hectare per year.</p> <p>For both A(a) and (b) up to a maximum of two hectares per year unless a beneficiary has prior written agreement from SNH for a larger area.</p> <p>For B £33 per hectare per year.</p> |

| <i>Column 1 Option</i> | <i>Column 2 Activity and eligibility conditions</i> | <i>Column 3 Rate of payment</i> |
|-------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| | <p>(e) does not apply fertiliser, slurry or farmyard manure to the managed area;</p> <p>(f) does not apply pesticides except with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species;</p> <p>(g) does not carry out supplementary livestock feeding on the site; and</p> <p>(h) where new grassland sward is being created, sows the site with a low productivity grass and herb mix agreed with the Scottish Ministers and uses seeds of local origin wherever possible.</p> <p>(4) For element A(c), beneficiaries with areas managed under the “creation and management of rough grassland on unimproved grass” option of the Orkney Hen Harrier Scheme are not eligible until contracts under that Scheme have expired.</p> <p>(5) For element B beneficiaries must maintain the rough vegetation for vole habitat and must not graze the area except in exceptional circumstances where a light grazing regime has been agreed with the Scottish Ministers.</p> | |
| 80. Open grazed grassland management for chough | <p>(1) This is a 5 year commitment.</p> <p>(2) A beneficiary is eligible for payment under this option for farm land on in-bye rotational grassland, permanent grassland, coastal grassland and heath on free draining or sandy soils in the Argyll Islands or in Wigtownshire, which is subject to year round or seasonal grazing, if the beneficiary—</p> <p>(a) manages grazing land to benefit chough by providing them with the conditions essential for them to breed successfully;</p> <p>(b) agrees with the Scottish Ministers a grazing plan setting out a livestock management and grazing regime;</p> | £93.72 per hectare per year |

| <i>Column 1 Option</i> | <i>Column 2 Activity and eligibility conditions</i> | <i>Column 3 Rate of payment</i> |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| | <p>(c) includes in the grazing plan the supplementary feeding methods for the livestock including the feeding location and how the feeding will be carried out to ensure that livestock graze the whole unit;</p> <p>(d) maintains an open sward on the site;</p> <p>(e) allows cattle and/or sheep to graze throughout the year or during specific times identified in the grazing plan;</p> <p>(f) manages the sward to create a variable height of more than 1 cm and up to 13cm which can include areas of sparse vegetation except when the field is closed off for silage production when the sward may exceed 13cm;</p> <p>(g) includes in the grazing plan the timing of any grazing breaks;</p> <p>(h) ensures the ground surface is visible and free from a build up of matted vegetation;</p> <p>(i) treats livestock where necessary with non-Avermectin based drugs unless otherwise advised by a veterinary surgeon and with the agreement of the Scottish Ministers;</p> <p>(j) cuts silage on or before 20th June; and</p> <p>(k) does not apply pesticides to the managed area except with the prior written agreement of the Scottish Ministers for activities such as spot treatment of injurious weeds or control of invasive non-native species.</p> <p>(3) The same field need not be managed each year but the beneficiary must provide details of the fields to be rotated in this way, their location and areas at the application stage. If, during the relevant period, a different rotation to that originally agreed is approved by the Scottish Ministers, the area upon which the annual management payment is calculated will be restricted to either the area originally approved or the revised area, whichever is smaller.</p> | |

| <i>Column 1 Option</i> | <i>Column 2 Activity and eligibility conditions</i> | <i>Column 3 Rate of payment</i> |
|------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 81. Upland habitat management plan | <p>(1) This is a commitment not exceeding 6 years.</p> <p>(2) A beneficiary is eligible for payment under this option if the beneficiary—</p> <ul style="list-style-type: none"> (a) where necessary assesses the site, and prepares an upland habitat management plan for upland within or affecting designated SSSI, SAC and SPA sites which are at risk from negative deer or livestock impacts; (b) submits the upland habitat management plan to the Scottish Ministers for approval within a period of 12 months of the commencement of the commitment; and (c) begins implementing the upland habitat management plan within a period of 13 months of commencement of the commitment under this option. <p>(3) Support will be available where—</p> <ul style="list-style-type: none"> (a) in the opinion of the Scottish Ministers the areas to be managed are large, have complex management issues or where collaboration by other land managers is required; and (b) either head (i) or head (ii) applies— <ul style="list-style-type: none"> (i) this head applies where either or both (aa) or (bb) below applies— <ul style="list-style-type: none"> (aa) deer management can be used to maintain or bring into favourable condition the upland features that are affected by grazing impacts; | <p>Site assessment: 100% of actual costs</p> <p>Upland habitat management plan (including annual reviews):</p> <p>Deer only: 100% of actual costs up to a maximum of £64,383.56</p> <p>Deer and livestock: 100% of actual costs up to a maximum of £64,383.56</p> <p>Livestock only: 100% actual costs, minimum of £600 up to a maximum of £1600</p> <p>Costs of land managers' own time are not eligible.</p> <p>Habitat impact assessment in Year 3 of implementation: 100% of actual costs</p> |

| <i>Column 1 Option</i> | <i>Column 2 Activity and eligibility conditions</i> | <i>Column 3 Rate of payment</i> |
|----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| | <p>(bb) deer are present, and in the opinion of the Scottish Ministers, the proposed upland habitat management plan considers whole deer ranges/livestock hefts are sufficient to enable the delivery of option objectives and in the opinion of the Scottish Ministers there is no requirement for compulsory management measures; or</p> <p>(ii) livestock only management can be used to maintain or bring into favourable condition the upland features that are affected by impact of grazing.</p> <p>(4) The upland habitat management plan must—</p> <p>(a) provide an audit of the condition of the upland site and identify how the impact of deer and/or livestock will be minimised;</p> <p>(b) address in an integrated manner the impacts of all grazing animals on the condition of the special features of the site, including deer and livestock;</p> <p>(c) comply with technical guidance for upland habitat management plans and where deer are present, with SNH Best Practice Guidance on Deer Management Plans(a);</p> <p>(d) detail which habitats are to be assessed and ensure sampling for these assessments is stratified by management units;</p> <p>(e) include achievable targets for enhancing the condition of key habitats within the implementation period of 5 years of the upland habitat management plan;</p> | <p>Open range deer count, if required, in Year 3 or early Year 4 of implementation: 100% of actual costs.</p> |

(a) This guidance is available online http://www.bestpracticeguides.org.uk/planning_dmpps.aspx or by contacting Great Glen House, Leachkin Road, Inverness, IV3 8NW.

| <i>Column 1 Option</i> | <i>Column 2 Activity and eligibility conditions</i> | <i>Column 3 Rate of payment</i> |
|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| | <p>(f) be supported by survey and monitoring information and must be reviewed and updated at the end of each of the first 4 years of the implementation period. In the case of annual deer culls, the review must take place after the cull and by 30th April;</p> <p>(g) take account of its likely impact on neighbouring land and any aspects of neighbouring land that might affect its delivery;</p> <p>(h) within a deer range which includes areas of woodland linked to open range areas, take the impacts of deer on the woodland habitats into account. Plans prepared under option 62 for adjacent woodland must also be taken into account; and</p> <p>(i) include a timetable for preparation and implementation of the upland habitat management plan.</p> <p>(5) Where deer and/or livestock have free range across management unit boundaries or where livestock and deer management are carried out on the same management unit and neighbouring land managers wish to collaborate they must—</p> <p>(a) establish a forum to consult and agree objectives and actions;</p> <p>(b) consult SNH to ensure the upland range to being targeted is biologically viable;</p> <p>(c) ensure the upland habitat management plan includes measures to manage the impact of grazing and trampling over the collaborative area, is prepared by a consultant and provides an overview of how deer and livestock impacts will be managed over the collaborative management area and includes individual plans for each land holding; and</p> <p>(d) divide the costs of preparing the overview among forum participants with each land manager liable for the cost of the plan for their own holding.</p> <p>(6) Where deer are present, the beneficiary must</p> | |

| <i>Column 1 Option</i> | <i>Column 2 Activity and eligibility conditions</i> | <i>Column 3 Rate of payment</i> |
|----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| | <p>carry out a habitat impact assessment in the third year of implementing the upland habitat management plan.</p> <p>(7) Where the habitat impact assessment indicates that the deer management must be adjusted to meet targets, the beneficiary must carry out a deer count by helicopter in the third year or early in the fourth year of implementing the plan to inform changes to the upland habitat management plan in the fourth and fifth year of the implementation period.</p> <p>(8) Where the habitat impact assessment indicates that a deer count may not be required, the beneficiary must notify the Scottish Ministers before 30th September and the Scottish Ministers may decide that the beneficiary does not need to undertake a deer count by helicopter.</p> <p>(9) The habitat impact assessment and the deer count by helicopter must comply with the SNH Best Practice guidance(a).</p> <p>(10) The beneficiary may enter into different contracts for each element of the upland habitat management plan and is responsible for managing the contracts. Applications for aid must be supported by quotes in accordance with programme guidance.</p> | |

(a) The guidance is available at www.bestpracticeguides.org.uk/siteindex.aspx.

SCHEDULE 2

Regulation 55(c)

SUBSTITUTION OF TABLE D IN PART 2 OF SCHEDULE 2 TO THE PRINCIPAL REGULATIONS

Table D

Standard Costs for Forestry Operations/Capital Items

| <i>Column 1</i> <i>Item</i> | <i>Column 2</i> <i>Standard Cost</i> |
|------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| Fell/extract dangerous trees | £200 per tree |
| Manual brashing | £0.35 per tree |
| High pruning | £1.30 per tree |
| Badger gates installed in fence lines which are cutting across an established badger run | £110 per gate |
| Respace natural regeneration | £600 per hectare |
| Early pruning of trees | £375 per hectare |
| High pruning of trees | £660 per hectare |
| Woodland thinning | £520 per hectare |
| Removal of tree crop to waste 3-6 metres high | £1,100 per hectare |
| Woodland clearance - felling of waste | £975 per hectare |
| Woodland clearance - felling and extraction | £1375 per hectare |
| Seedling tree removal | £35 per hectare |
| Chipping/mulching of tree debris and brash | £500 per hectare |
| Restructuring with Caledonian Scots pine | £411.64 per hectare |
| Restructuring with diverse conifers | £411.64 per hectare |
| Restructuring with mixed broadleaves | £1,030.14 per hectare |
| Restructuring with native broadleaves | £1,100 per hectare |
| Restructuring with mixed conifer and broadleaves | £595.89 per hectare |
| Woodland deer impact reduction | £30 per hectare for deer control during the first 5 years of a Deer Management Plan |
| Forest plan preparation | £20 per hectare for first 200 hectares, £5 per hectare thereafter with a minimum payment of £400 and a maximum payment of £15,000 |
| Dead wood management | £40 per hectare |
| Stock fence | £4 per metre |
| Enhancing/modifying a stock fence in black grouse and capercaillie core areas | £2 per metre |
| New deer fence | £7.25 per metre |
| Upgrading stock to deer fence | £2.75 per metre |
| Scare or temporary fencing | £1.50 per metre |
| Rabbit proofing – existing or new stock/deer fence | £1.90 per metre |
| Enhancing/modifying a deer fence in black grouse and capercaillie core areas | £5 per metre |
| Conversion of deer fence to stock fence in black grouse and capercaillie core areas | £2 per metre |
| Fence removal | £2 per metre |
| Gate for stock fence | £100 each |
| Gate for deer fence | £170 each |

| | |
|---------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| Ditch/drain blocking with plastic piling dams: Small ditches (up to 0.5 metres wide and deep) | £60 per dam |
| Ditch/drain blocking with plastic piling dams: Medium ditches (between 0.5 and 1 metre wide and deep) | £120 per dam |
| Ditch/drain blocking with plastic piling dams: Large ditches (between 1 and 2 metres wide and 0.5 and 1 metre deep) | £280 per dam |
| Peat dam | £0.26 per metre of drain or furrow blocked with peat dams. Minimum payment £300 |
| Small scale tree and shrub planting (on a site not exceeding 0.25 hectares) | £2 per tree or shrub |
| Provision of bat and bird boxes | £15 per box |
| Primary treatment of bracken | £200/hectare of infested land |
| Eradication of scrub/woody vegetation: Light vegetation | £600/hectare |
| Eradication of scrub/woody vegetation: Intermediate vegetation | £850/hectare |
| Eradication of scrub/woody vegetation: Heavy vegetation | £1250/hectare |
| Removal from site of the cut shrub/woody vegetation: Light vegetation | £500/hectare |
| Removal from site of the cut shrub/woody vegetation: Intermediate vegetation | £1050/hectare |
| Removal from site of the cut shrub/woody vegetation: Heavy vegetation | £1450/hectare |
| Provision of water troughs to replace traditional watering points | £195 each |
| Installation of water supply pipe to water trough or pasture pump | £3 per metre of pipe laid |
| Water trough pump: cattle operated pasture or nose pump | £180 per installed pump |
| Stock bridge for bog management: Small bridge Large bridge (for ditch wider than 1.5 metres) | £170 per bridge £620 per bridge |
| Heather management (in black grouse and Capercaillie core areas) | £250/hectare |
| Manual eradication of rhododendron: Light infestation/easy access Medium infestation/access Difficult access | £4,500 per hectare of infested land £6,100 per hectare of infested land £9,500 per hectare of infested land |
| Mechanised eradication of rhododendron: Light infestation/easy access Medium infestation/access Difficult access | £1,800 per hectare of infested land £2,400 per hectare of infested land £2,900 per hectare of infested land |
| Chemical eradication of rhododendron by foliar or stem injection | £1,500 per hectare of infested land |
| Self-closing/kissing gate for non-vehicular access | £350 each |
| Stile | £55 each |
| Building/restoring drystone or flagstone dykes | £17.50 per square metre |

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008 (“the 2008 Regulations”), which introduce measures to supplement Council Regulation (EC) No 1698/2005 (O.J. L 277, 21.10.2005, p.1), as amended, (“the Council Regulation”) laying down general rules governing Community support for rural development (financed by the European Agricultural Fund for Rural Development established by Council Regulation (EC) No 1290/2005 (O.J. L 209, 11.8.2005, p.1)) and Commission Regulations (EC) No. 1974/2006 (O.J. L 368, 23.12.2006, p.15) and 65/2011 (O.J. L 25, 28.1.2011, p.8) laying down detailed rules for the application of the Council Regulation.

The 2008 Regulations provide for the payment of aid to be made available by the Scottish Ministers from the Scotland Rural Development Programme 2007-13 to any person who enters into an undertaking with the Scottish Ministers to carry out, or as the case may be, carry out and maintain the activities relevant to at least one of the rural priorities options set out in Schedule 2 to the 2008 Regulations, and where relevant one or more of the capital items in relation to a particular rural priorities option as set out in Schedule 3 to the 2008 Regulations.

These Regulations amend the 2008 Regulations by amending the definition of “area related options” (regulation 2) and making consequential changes to cross-compliance and payment requirements (regulations 5 and 7(a)).

They amend the 2008 Regulations by replacing references to Commission Regulation 796/2004 with references to Commission Regulation 1122/2009 (regulations 3, 4, 6 and 7) and references to Commission Regulation 1975/2006 with references to Commission Regulation 65/2011 (regulations 3, 6, 8, 9, 10 and 11) and they update some domestic statutory references (regulations 3 and 58).

These Regulations amend Schedule 1 to the 2008 Regulations by adding new definitions of serpentine vegetation, special interest heath and winter keep and amending the definitions of coastal heath, rural settlement, fully organic, organic production and omit the definition of Organic Standards Compendium (regulation 12).

Rural priorities option 26 (wardening for Golden Eagles) is omitted and rural priority options 10, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 37, 38, 41, 43, 47, 48, 49, 50, 51, 52, 53, 54, 60, 61, 66, 67, 70, 74, 75 and 78 in Part 1 of Schedule 2 are amended (regulations 13 to 53), in particular option 10 (improving the economic value of forests) to reduce the required area of forest; option 19 (management of mown grassland for corncrakes) to include chough; option 38 (management of coastal or serpentine heath) to include special interest heath; option 30 (creation and management of species rich grassland) for the benefit to wildlife and also to bees, moths and butterflies; option 48 (management of extended hedges to include hedgerow trees; option 51 (management of cropped machair) to provide additional payment for shallow ploughing and sharing ploughing equipment; option 60 (woodland creation) to add new woodland types in Northern and Western Isles and Central Scotland; option 70 (vernacular rural buildings, archaeological or historic sites, historic landscapes) to include involvement of professional advisors and exclude beneficiary’s own labour costs; in a number of options to ensure that the application of pesticides is only permitted with the prior written agreement of the Scottish Ministers and other small clarifications.

New rural priorities options are added into Part 1 of Schedule 2 (regulation 54 and Schedule 1). These are options 79 (creation and management of grassland for hen harriers), 80 (Open grazed grassland management for chough) and 81 (Upland habitat management plan). The 2008 Regulations contained options 1 to 73, options 74 to 77 were added by SSI 2008/233 and option 78 was added by SSI 2009/411.

New payment rates for woodland creation in the Northern and Western Isles and in Central Scotland are introduced in Part 2 of Schedule 2 to the 2008 Regulations (regulation 55(a) and 55(b)) and some standard costs for forestry operations/capital items are amended in Table D in Part 2 of Schedule 2 (regulation 55(c) and Schedule 2). The description of the two items for

payment of woodland improvement grants in Table E of Part 2 of Schedule 2 has been amended (regulation 55(d)).

In Table A of Schedule 3 to the 2008 Regulations, the standard payment rates for capital items have been amended in relation to eradication of rhododendron, the description of heather management in black grouse core areas has been amended to include capercaille core areas and a new capital item covering vole guard/small tree protector has been introduced (regulation 56). The eligible capital items available through item option 77 have been amended in relation to eradication of rhododendron (regulation 57).

No Business and Regulatory Impact Assessment has been prepared for this instrument as it has no impact on the cost of business.

SCOTTISH STATUTORY INSTRUMENTS

2011 No. 138

TOWN AND COUNTRY PLANNING

**The Town and Country Planning (Miscellaneous Amendments)
(Scotland) Regulations 2011**

Made - - - - - *21st February 2011*

Laid before the Scottish Parliament *23rd February 2011*

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 8(1)(b), 16(2)(b), 32, 38A(1), 43, 43A(10), 75B(3), 75F(3), 131, 267, 275 and 275A of the Town and Country Planning (Scotland) Act 1997(a) and all other powers enabling them to do so.

Citation and commencement

1.—(1) These Regulations may be cited as the Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2011 and come into force in accordance with paragraphs (2) and (3).

(2) These Regulations (other than regulation 2(5)) come into force on 1st April 2011.

(3) Regulation 2(5) comes into force on 1st October 2011.

**Amendment of the Town and Country Planning (Development Management Procedure)
(Scotland) Regulations 2008**

2.—(1) The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008(b) are amended in accordance with paragraphs (2) to (6).

(2) For regulation 27 (pre determination hearings) substitute—

“Pre-determination hearings

27.—(1) Before determining an application for planning permission for a development within the classes of development specified in paragraph (2), the planning authority are to give to the applicant and to persons who submit representations to the planning authority in respect of that application in accordance with these Regulations an opportunity of appearing before and being heard by a committee of the authority.

(a) 1997 c.8. Sections 8 and 16, 32, 38A, 43A, 75B, 75F and 275A were inserted by sections 2, 7, 14, 17, 23, 24 and 52 of the Planning etc. (Scotland) Act 2006 (asp 17) (“the 2006 Act”). Sections 43, 267 and 275 were amended by sections 16, 19(5) and (6) and 54(16) respectively of the 2006 Act. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.S.I. 2008/432 amended by S.S.I. 2009/220.

- (2) The classes of development prescribed for the purposes of section 38A(1) of the Act are developments within the categories of—
- (a) national developments; and
 - (b) major developments which are significantly contrary to the development plan.”.
- (3) In regulation 28 (decision notice)—
- (a) in paragraph (1)(b) for “person” substitute “authority, person or body”; and
 - (b) in paragraph (3)(a)(v) for “58(2) or 59(4)” substitute “58(1) or 59(4)”.
- (4) In regulation 35 (application to marine fish farming)—
- (a) in paragraph (3)—
 - (i) insert “and” after sub-paragraph (a);
 - (ii) omit “and” after sub-paragraph (b); and
 - (iii) omit sub-paragraph (c); and
 - (b) after paragraph (4) insert—

“(4A) In regulation 13 for paragraphs (1) and (2) substitute—

“(1) Subject to paragraph (3), an application for planning permission for marine fish farm development belonging to the category of major developments must be accompanied by a design statement.

(2) Subject to paragraph (3), an application for planning permission for marine fish farm development belonging to the category of local developments where that development is situated within—

 - (a) a World Heritage Site;
 - (b) a National Scenic Area; or
 - (c) the site of a scheduled monument,

must be accompanied by a design statement other than where the development in question comprises the alteration or extension of an existing marine fish farm.””.
- (5) In Schedule 5 (consultation by the planning authority) after paragraph 14 insert—
- “**15.** The Crofters Commission where the development may have an adverse effect on the continued use of land for crofting.”.
- (6) In Schedule 6 (notice to accompany refusal etc.) in paragraph 1 of both Form 1 and Form 2 for “three months from” substitute “three months beginning with”.

Amendment of the Town and Country Planning (Appeals) (Scotland) Regulations 2008

- 3.—**(1) The Town and Country Planning (Appeals) (Scotland) Regulations 2008(a) are amended in accordance with paragraphs (2) to (6).
- (2) In regulation 3(3) (notice of appeal)—
- (a) in paragraph (d) for “what procedure” substitute “what, if any, procedure”; and
 - (b) after paragraph (d) insert—

“; and

 - (e) where the appeal is made under section 47(1) of the Act, a copy of the decision notice”.
- (3) In regulation 4(2)(a) (intimation to planning authority and planning authority’s response) for “what procedure” substitute “what, if any, procedure”.

(a) S.S.I. 2008/434 amended by S.S.I. 2009/220.

(4) In regulation 13 (statement of appeal)—

(a) for paragraph (1) substitute—

“(1) The appellant must at the same time as giving notice of appeal to the Scottish Ministers under section 130(2), 169(2) or 180(2) of the Act, as the case may be, also submit a statement (“statement of appeal”) on a form to be obtained from the Scottish Ministers.

(1A) The statement of appeal, in addition to specifying the grounds of appeal as required by section 130(3)(a) (and as applied by section 180(3)) or 169(3) of the Act, is to give the information specified in paragraph (2).”; and

(b) in paragraph (2)(e) for “what procedure” substitute “what, if any, procedure”.

(5) In regulation 14(2)(a) (intimation of appeal to planning authority and planning authority’s response) for “what procedure” substitute “what, if any, procedure”.

(6) For regulation 17(2)(b) (called-in applications) substitute—

“(b) references to the appointed person—

(i) in Parts 3 and 7 (other than in regulation 21), rule 1(1) of the Hearing Session Rules and rule 1(1) of the Inquiry Session Rules are to be treated as references to the Scottish Ministers; and

(ii) in regulation 21, the Hearing Session Rules (other than in rule 1(1)) and the Inquiry Session Rules (other than in rule 1(1)) are to be treated as references to the person appointed to hold the hearing session or inquiry session, as the case may be;”.

Amendment of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008

4.—(1) The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008(**a**) are amended in accordance with paragraph (2).

(2) In regulation 9(3)(d) (notice of review) for “what procedure” substitute “what, if any, procedure”.

Amendment of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008

5.—(1) The Town and Country Planning (Development Planning) (Scotland) Regulations 2008(**b**) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 1(2) (interpretation)—

(a) after the definition of “environmental report” insert—

““flood risk management plan” and “local flood risk management plan” have the same meaning as in the Flood Risk Management (Scotland) Act 2009(**c**).”; and

(b) after the definition of “local housing strategy” insert—

““national marine plan” and “regional marine plan” have the same meaning as in Part 3 of the Marine (Scotland) Act 2010(**d**).”; and

(c) after the definition of “river basin management plan” insert—

““Scottish marine area” has the meaning given in section 1 of the Marine (Scotland) Act 2010;”.

(a) S.S.I. 2008/433 amended by S.S.I. 2009/220.

(b) S.S.I. 2008/426 amended by S.S.I. 2009/220.

(c) 2009 asp 6.

(d) 2010 asp 4.

(3) In regulation 3(1) (information and considerations)—

(a) after paragraph (c) insert—

“(ca) any adopted national marine plan or regional marine plan relating to parts of the Scottish marine area adjoining the strategic development plan area;”; and

(b) after paragraph (d) insert—

“(da) any approved flood risk management plan or finalised local flood risk management plan relating to the strategic development plan area;”.

(4) In regulation 10(1) (information and considerations)—

(a) after paragraph (c) insert—

“(ca) any adopted national marine plan or regional marine plan relating to parts of the Scottish marine area adjoining the local development plan area;”; and

(b) after paragraph (d) insert—

“(da) any approved flood risk management plan or finalised local flood risk management plan relating to the local development plan area;”.

Amendment of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010

6.—(1) The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010(**a**) are amended in accordance with paragraph (2).

(2) In regulation 9(2)(a)(iii) (application of the Town and Country Planning (Appeals) (Scotland) Regulations 2008) in the definition of “period allowed for determination of the application” after “Country” insert “Planning”.

Amendment of the Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010

7.—(1) The Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010(**b**) are amended in accordance with paragraph (2).

(2) In regulation 9(2)(a)(iv) (application of the Town and Country Planning (Appeals) (Scotland) Regulations 2008) in the definition of “period allowed for determination of the application” after “Country” insert “Planning”.

KEITH BROWN

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
21st February 2011

(a) S.S.I. 2010/432.

(b) S.S.I. 2010/433.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make minor amendments to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008, the Town and Country Planning (Appeals) (Scotland) Regulations 2008, the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008, the Town and Country Planning (Development Planning) (Scotland) Regulations 2008, the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 and the Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010. The changes come into force on 1st April 2011 other than the new requirement for the planning authority to consult with the Crofters Commission on the terms of certain planning applications, which comes into force on 1st October 2011.

Regulation 2 amends the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008. Paragraph (2) substitutes a new regulation 27 which clarifies when a planning authority is under a duty to hold a pre-determination hearing. Paragraph (3) amends regulation 28 so as to make the wording consistent with other provisions in the Regulations and to correct a statutory reference. Paragraph (4) amends the provisions relating to the requirement to submit a design statement in connection with an application for planning permission for a marine fish farm in order to align them with similar requirements for development on land. Paragraph (5) introduces a requirement to consult the Crofters Commission in respect of certain planning applications. Paragraph (6) makes a minor change to the form of notice to be issued when refusing an application to clarify the date of commencement of the three month period within which an appeal can be made or a review requested.

Regulation 3 amends the Town and Country Planning (Appeals) (Scotland) Regulations 2008. Paragraphs (2)(a), (3), (4)(b) and (5) make minor changes to regulations 3, 4, 13 and 14 respectively to make it clear that it is possible to indicate that no further procedure is needed in connection with an appeal. Paragraph (2)(b) introduces a requirement that the appellant provides a copy of the planning authority's decision notice when appealing under section 47(1) of the Town and Country Planning (Scotland) Act 1997. The amendment made to regulation 13 by paragraph (4) clarifies the wording of the current paragraph (1). Paragraph (6) makes a minor change the way in which regulation 17 adjusts the language of the Regulations as they apply to cases to be determined by the Scottish Ministers.

Regulation 4 amends the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 to make it clear that it is possible to indicate that no further procedure is needed in connection with a review.

Regulation 5 amends the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 to include flood risk management plans and regional and national marine plans among the matters to be taken into consideration when preparing a strategic development plan or a local development plan. Regulations 6 and 7 respectively make minor corrections to the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 and the Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010.

SCOTTISH STATUTORY INSTRUMENTS

2011 No. 145

TOWN AND COUNTRY PLANNING

**The Town and Country Planning (Marine Fish Farming)
(Scotland) Amendment Regulations 2011**

Made - - - - - *21st February 2011*

Laid before the Scottish Parliament *23rd February 2011*

Coming into force - - - *1st April 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 31A(8) of the Town and Country Planning (Scotland) Act 1997(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Town and Country Planning (Marine Fish Farming) (Scotland) Amendment Regulations 2011 and come into force on 1st April 2011.

Amendment of the Town and Country Planning (Marine Fish Farming) (Scotland) Regulations 2007

2.—(1) The Town and Country Planning (Marine Fish Farming) (Scotland) Regulations 2007(b) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 1(2) (interpretation)—

(a) in the definition of “marine fish farm” for “, other than shellfish,” substitute “or shellfish”; and

(b) after the definition of “marine waters” insert—

““pre-1999 marine fish farm” means a marine fish farm referred to in regulation 2(2)(a); and

“shellfish” includes any kind of sea urchin, crustacean or mollusc.”.

(3) For regulation 2(2) (requirement for an application for planning permission) substitute—

“(2) Subject to paragraph (3), paragraph (1) applies in respect of a marine fish farm where—

(a) the operation of that marine fish farm on 1st April 2007 was permitted by an authorisation granted pursuant to an application for such authorisation made before 14th March 1999; or

(a) 1997 c.8. Section 31A was inserted by section 4(2) of the Planning etc. (Scotland) Act 2006 (asp 17).

(b) S.S.I. 2007/175.

(b) the operation of that marine fish farm on 1st April 2011 is permitted by an authorisation granted pursuant to an application for such authorisation made after 14th March 1999.

(3) Paragraph (1) does not apply in respect of a marine fish farm if planning permission is granted for the operation of that marine fish farm by the Town and Country Planning (Marine Fish Farms Permitted Development) (Scotland) Order 2011^(a).

(4) In regulation 3(c) (application for planning permission) after “plan” insert “or other description”.

(5) In regulation 4 (consultation) for “a marine fish farm” substitute “a pre-1999 marine fish farm for the breeding, rearing or keeping of fish other than shellfish”.

KEITH BROWN

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
21st February 2011

^(a) S.S.I. 2011/144.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Town and Country Planning (Marine Fish Farming) (Scotland) Regulations 2007 (“the 2007 Regulations”). The 2007 Regulations specify the cases where an application for planning permission must be made before planning permission may be granted by the Scottish Ministers under section 31A of the Town and Country Planning (Scotland) Act 1997.

Regulation 2 extends the cases of marine fish farm in respect of which an application for planning permission under section 31A of that Act must be made to the Scottish Ministers. Regulation 2(2)(a) amends the definition of “marine fish farm” to include shellfish farms. This extends the requirement for an application to both finfish and shellfish marine fish farms which operate under an authorisation applied for before 14th March 1999. Regulation 2(3) extends the application of regulation 2(1) of the 2007 Regulations to all other marine fish farms using equipment referred to in section 26AA(1)(b) of that Act which are actively being operated on 1st April 2011. Regulation 2(4) allows the applicant when making an application to identify the location of the fish farm by either a plan or by other manner of description. Regulation 2(5) with the changes to the definitions in the 2007 Regulations made by regulation 2(2)(b) limits the requirement to consult to cases where the application relates to a marine fish farm described in the new regulation 2(2)(b).

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

PETITION PE1340 – INCREASING THE PROTECTION OF SCOTLAND'S TREE HERITAGE

Note by the Clerk

Introduction and action by Public Petitions Committee

1. This [petition](#) calls on the Scottish Parliament to urge the Scottish Government to extend and simplify the system of Tree Preservation Orders (TPOs) to give all trees a protection similar to that enjoyed by trees in conservation areas. It was lodged on 3 August 2010 by John Scott on behalf of Neilston and District Community Council. He has been supported by the Woodland Trust Scotland.

2. The Public Petitions Committee (PPC) first considered the petition on [7 September 2010](#) (See Official Report extract at Annexe A, page 3). It took evidence from Mr Scott, and agreed to write to the Scottish Government and other stakeholders to seek responses on the issues raised. Written submissions received are set out in Annexe B (page 11). The PPC then considered the petition again on [23 November 2010](#) (see Official Report extract at Annexe C, page 21). The PPC agreed to refer the petition to this Committee for consideration as part of its Stage 1 scrutiny of the Wildlife and Natural Environment (Scotland) Bill. However, this Committee in fact agreed and published its Stage 1 report on the Bill on 24 November.

Factual background to the petition

3. The petitioner objected to the felling of several mature trees from a local beech avenue. Employees or contractors of a power company felled them because they were near a pylon. (It had apparently been the company's previous practice to trim the trees from time to time.) There is no reason to believe that the felling was unlawful, which is the point of the petition.

Legal background

4. Trees are property, which means that, in line with the general law of property, the owner ordinarily may dispose of them how they wish. A tree may be lawfully felled with the owner's permission. However anyone involved in the felling of trees must have obtained a felling license from the Forestry Commission (Forestry Act 1967).

5. Under section 160 of the Town and Country Planning (Scotland) Act 1997, a planning authority may impose a TPO. A tree subject to a TPO may not be felled, lopped or otherwise damaged. (A TPO does not give complete protection: the tree may be felled etc if permission is given by the planning authority, or for other reasons, including that it is urgently necessary in the interests of public safety or that development consent has been granted.)

6. A planning authority may make a TPO if satisfied that doing so is "expedient in the interests of amenity", giving it relatively wide discretion. In practice, TPOs tend to be granted to protect veteran trees, or trees of historical, conservation or aesthetic interest. Planning authorities are not required to impose TPOs and there is

no formal mechanism set out in the 1997 Act for any person to require an authority to consider granting one.

7. However, section 172 of the 1997 Act in effect extends the protection afforded by a TPO to any tree growing in a conservation area. Anyone wishing to fell, etc, a tree in the area must make an application to the authority, and the authority has six weeks to decide whether to protect the tree. (If the authority does not respond, the protection is removed.)

8. The petitioner originally proposed extending the protection afforded to trees in conservation areas to all trees. Stakeholders who responded to the PPC expressed some doubts as to whether this was practicable. The Woodland Trust which, as noted, supports the petition, proposed instead the creation of a new statutory designation; “tree conservation areas”. There would be a statutory presumption against any works carried out to trees in any TCA without prior notification to the local authority. The Trust does not elaborate on the mechanism by which these new areas would be brought into being but the implication is that there would be some sort of stakeholder involvement in the designation of any TCA. The Trust made similar comments in its Stage 1 submission to this Committee on the Wildlife and Natural Environment (Scotland) (“WANE”) Bill, suggesting that the Bill afforded an opportunity to amend the law along these lines.

Action undertaken so far by this Committee

9. The Committee considered the petition and an additional written submission made by the petitioner (see Annexe E) on 22 December 2010. It was agreed that an amendment should be lodged to the WANE Bill, broadly seeking to implement the legal change requested by the petitioner, so as to test the arguments for and against such a change and, in particular, ascertain the Scottish Government’s view on it.

10. Bill Wilson MSP subsequently lodged such an amendment, which was debated at Stage 2 of the Bill on 19 January (official report extract, Annexe D, page 21). In debate, the Minister said the Government did not support the amendment. She said that recent changes to planning law would enable planning authorities to serve a tree conservation order on the basis of a tree’s “cultural and historic significance” within the current TPO framework. She considered that this addressed the issues the amendment raised. She said there was no evidence that authorities wished to have, or would make use of, the proposed new “tree conservation areas”. The amendment was not pressed.

Decision

11. With an election imminent, the Committee essentially has two options:

- To close the petition. This would be on the basis that the issue has been given an airing through debate at Stage 2 of the WANE Bill, and that the Government has made it reasonably clear that it does not intend to make the legal change requested by the petitioner, or
- To continue the petition, so as to give the successor Committee to this Committee the opportunity to decide whether and how to take any further action on it.

ANNEXE A

**EXTRACT FROM OFFICIAL REPORT OF PUBLIC PETITIONS COMMITTEE
MEETING ON 7 SEPTEMBER 2010**

INCREASING THE PROTECTION OF SCOTLAND'S TREE HERITAGE

The Convener: The second new petition is PE1340, by John Scott, on behalf of Neilston and district community council. The petition calls on the Scottish Parliament to urge the Scottish Government to extend and simplify the system of tree preservation orders to give all trees protection similar to that which is enjoyed by trees in conservation areas.

I welcome John Scott from Neilston and district community council, and Jill Butler, who is conservation adviser to the Woodland Trust. One of you is invited to make an opening statement of no more than three minutes, after which members will have the opportunity to ask questions. I thank you for the additional information that has been provided to members.

John Scott (Neilston and District Community Council): Good afternoon, ladies and gentlemen. As has already been mentioned, I am here on behalf of Neilston and district community council. I thank the Public Petitions Committee for inviting us here and giving us the opportunity to discuss the petition.

We have come together as a community to improve the protection of mature and ancient trees, not only in our local area but throughout Scotland. We feel extremely strongly about the continued loss of trees from our communities, which often happens for the most trivial of reasons. Unfortunately, the problem seems to be getting worse every year. We believe that the current system and, indeed, some of the proposals that are set out in the Scottish Government's recent consultation on TPOs do not adequately protect the important trees in our communities, so we would like to see changes to the legislation and the tree protection system in order to give all trees a similar level of protection to that which is enjoyed by trees in conservation areas.

Col 2805

Scotland is already at the forefront of tree conservation, with imaginative projects such as the big tree project, which is rescuing and conserving some of the world's most threatened conifers from as far away as Brazil and Chile and replanting them in the Perthshire woodlands. It is both historically and culturally important and has a potentially long-term tourist benefit.

Unfortunately, however, the majority of our own home-grown and—dare I say it?—less glamorous trees have little or no protection. I offer a brief example that I mention in the petition. Between the villages of Neilston and Uplawmoor there is a 2 mile long avenue of beech trees, which are about 150 years old. At one point on the road, they are straddled by power lines on tall pylons. I am not talking about small pylons; I am talking about your big 142,000kV pylons. Every four to five years those

trees used to be trimmed back by Scottish Power for obvious health and safety reasons. One summer afternoon this year, three trees on each side of the road—a total of six mature beech trees—were cut down and put through the chipper. The answer to the question why Scottish Power did it is that rather than trim the trees every four or five years, it is cheaper just to chop them down and that is your problem solved forever.

Neilston and district community council and Uplawmoor community council approached East Renfrewshire Council and asked it to at least write to Scottish Power to ask why it cut down the trees without any consultation and whether it would consider replanting semi-mature trees in their place. The council was unwilling to do so and said that the trees had no protection and it was not really within its remit to do so. Unfortunately, after all this time we have mature trees without any protection.

There are problems with tree protection in Scotland. When the Scottish Government started to consider changes to the Planning Act 2008, the input on trees was supplied mainly by external consultants. They are good consultants who know all about planning, but they are not exactly tree experts. The people with the knowledge and experience in the field—the Woodland Trust and the ancient tree forum—lobbied hard but unsuccessfully for a change to the TPO regulations.

The local authority approach to trees also varies considerably, as was mentioned in Roger Jessop's report, which I also mentioned in the original petition. In East Renfrewshire Council we have one planning officer who deals with trees, tree protection orders and maintenance. To put that into perspective, East Renfrewshire Council covers 174km², is classed as being 85 per cent rural and has a total of 73 tree preservation orders

Col 2806

in place. That is one tree preservation order per 2.5km².

Although the concept of having some sort of protection order for every tree in Scotland would be an ideal, it is vital that we acknowledge and identify our trees of greatest value and make sure that they are adequately safeguarded. We need a system that identifies such trees and their value to our communities at both local and national levels, and which ensures that owners are aware of trees' significance.

At present, conservation areas are determined by the architecture or historical value of the buildings within a village, town or settlement. The protection of trees in conservation areas has been included almost as an accidental by-product of the legislation. As a practical approach, we could develop one of the concepts in our petition, which calls for the extension to

"all trees a protection similar to that enjoyed by trees in conservation areas"

to at least have areas or groups of trees in Scotland designated as tree conservation areas. For example, those might be avenues of trees leading into a village or within a village, groups of trees in the countryside, groups of important

trees in a garden or designed landscape in the Scottish inventory, even within a town. The trees within such designated tree conservation areas would enjoy the same protection as trees within the present conservation areas—that is, any proposed tree works would have to be notified to the local authority before any work was carried out. The identification of such proposed tree conservation areas could be led by community groups submitting their proposals to the local authorities.

We earnestly ask the Scottish Parliament as a matter of urgency to examine and enhance the legislation to protect and ensure the conservation of trees in Scotland. As I mentioned, I have with me Jill Butler from the Woodland Trust Scotland and the ancient tree forum to help to answer any questions. Jill Butler has many years' experience of tree conservation both with the Woodland Trust and the ancient tree forum and has a long-standing interest in the protection of trees and woodland in Scotland and throughout the UK.

Robin Harper: Again, I refer people to the register of interests and my membership of several woodland trusts including Carrifran wildwood and the Woodland Trust Scotland.

I was involved in trying to get some improvements to the legislation back in 2007, but was sadly ineffective. Would it be even a start to have a presumption against the cutting down of mature trees and an injunction that notification of intention with several months' notice should always be given before such a tree be attacked?

Col 2807

My second question is tangential to the petition as it stands, and is about the extra recognition that you and I feel should be given to trees that could be identified as being of great historic and cultural significance. There are not so many of them, but there is no special recognition of their value or special protection for them under the legislation as it stands. Do you want to make any observations on that?

John Scott: The answer to your first question is emphatically, "Yes." We would like there to be a presumption against felling. Your second question about ancient trees and so on falls more within Jill's territory. They would require special protection in addition to conservation.

Jill Butler (Woodland Trust): Conservation is the mechanism, but at the moment the historic and architectural interests of conservation areas drive the system and it sweeps up trees as part of that. We are asking only for a very modest step to be taken to broaden that concept for designation of conservation areas to include trees. We believe that the system that we propose would be effective because all that would be required is a notification system for the owner of the trees. It is relatively straightforward for the local authority to manage notifications in such a way as to give permission for works to go ahead in the majority of cases, if it is happy with that. The system that we would prefer is therefore very simple.

Scotland has an international heritage of important trees and our current system means that many of our most important trees have no protection whatever, so someone could cut them down without doing anything legally wrong—we are not

accusing people of that—whereas many other trees, particularly those in conservation areas, are extremely modest, if not relatively unimportant, but are protected. That is an anomaly and we are not balancing the situation very well.

It is also unfair for tree owners. On the one hand, a tree owner with an important tree has no need to notify anyone or to pay any money to manage that tree, while on the other hand someone who lives in a conservation area or who has a tree protection order, which usually means that the tree is important, faces a big burden. The system that we have at the moment is very unfair.

We would like communities to be involved in identifying areas of rich and important trees. The concept behind conservation areas is that communities get involved in the process of identifying those areas: we have, through our ancient tree hunt project, demonstrated during the past four years that communities are interested in that process.

I can give you any number of examples. For example, in south-west Scotland, Cally Palace

Col 2808

park, which is on the register of landscape gardens and historic parks, and Cardoness Castle, which is not, have superb trees, but neither of them will have protection for those trees. We are looking for a mechanism to introduce conservation areas for such incredibly rich collections of trees. Generally speaking, we are talking about areas that have many highly important trees with many ownerships. The conservation area approach is very cost-effective in such circumstances.

15:00

John Scott: I will add one thing from my experience. At the moment, a developer who wants to build houses in an area where there are mature trees must submit to the council their plans for which trees they would leave and which they would remove. That is all agreed with the council and, if there are trees to be retained, the council will apply the legislation. I do not know the exact British standard, but the trees have to be fenced off and protected and no damage must be done to them in the course of the development. However, as happened where I stay, once the houses pass into private ownership, that protection lapses and some owners chop the trees down because they do not like their gutters getting full of leaves or having leaves in their driveways. Believe it or not, that has happened. We are protected from the developers but not from householders. There is something wrong with that.

Jill Butler: We know from arboricultural contractors and surveyors who are involved in such developments that, in certain cases, before they are invited in to do their presentations before a project goes to planning application, the developer cuts down the trees because they know that they are important and do not want them in the way, which would jeopardise their planning application. We have the evidence that that is happening.

Nanette Milne: You took the words out of my mouth. I was going to cite an instance from when I was a council member of beautiful trees being felled just ahead of a planning application's being submitted. It was very frustrating even though the trees were obviously not protected.

I have a lot of sympathy with what you propose. However, given that councils are under significant pressure and that there might be only one tree expert in a large council area, would it place an even greater burden on councils? Having heard you, I am not sure that that would necessarily be the case. Would it increase or, perhaps, decrease the load on them?

Jill Butler: It would, if it were introduced, be one tool in the package of tools that the local authority would have. Authorities would be able to choose

Col 2809

the right tools for the right circumstances. There would still be a notification process, but we would bring many trees into that process under the same auspices and it would be simpler.

If the community encouraged the owners of 75 per cent of the trees to realise that they were living in an important tree area, it would probably work to ensure that the trees were looked after and the notifications would just be a question of ticking a box. We want to move to proactive engagement with the community to ensure that it values what it lives in.

I do not underestimate how valuable such areas are. Recent research says that avenues such as the one that John Scott mentioned reduce speed and save lives. There are all sorts of benefits. We know about climate benefits. Mature trees are more important for those, as well as being important for health benefits and the value of properties.

We need to shift into a much more explanatory role. If we introduce a conservation area approach, it will be more possible for communities that have been designated as important to draw down money from sources other than the local authority to help them to manage the trees in highly effective ways such as tree trails, awareness raising, events and publicity.

Nanette Milne: I envisaged that the notification would go to the council, which would be obliged to verify it. Would it have to go and check every tree in an area that was notified? However, if communities were to be much more proactive, I can see where you are coming from.

Jill Butler: The notification process applies even to small trees. Mechanisms could be introduced through regulation, including raising the threshold for the size of tree that requires notification. It is important that the measures should be uniform across Scotland. We are concerned about that aspect of the latest TPO consultation. We do not want differences between one local authority and another. That would give the lawyers a licence to play off one authority against another in the courts; an owner in one local authority area could come under one set of rules and an owner in

another authority under a different set of rules. That would be an onerous system that would be not only unfair but hugely confusing and difficult to manage. Indeed, over time, it would become an enormous burden. We are very concerned about the proposed changes to the model order. We are looking for improvements to TPOs and conservation areas so that the tools work as effectively as possible for tree protection. At the moment, trees are falling through the net. That is a serious situation.

Col 2810

John Wilson (Central Scotland) (SNP): A number of years ago, I had experience of a local authority taking responsibility for topping an avenue of lime trees. I mention this in respect of the conflict that arises when local authority officers give their authority the go-ahead to top trees that have a TPO. The example also raises the issue of the application of TPOs by local authorities. You talked of a six-week notification period for consultation and raised the issue of local authorities interpreting the regulations differently. The community council has raised the question of conflict between a local authority and a local community. I referred to an authority removing an avenue of trees. An authority can get into conflict with a community because the community wants a preservation order placed on a tree or trees and the authority disagrees with the need for a TPO. Is the six-week notification period sufficient time in which to allow a community to be engaged in the consultation process? How can we ensure that authorities get the right solution to the issues that have been raised?

Jill Butler: You are saying that if there was a conservation area for trees, would the six-week period be sufficient for consultation to take place?

John Wilson: My concern is consultation with communities. If we are talking about communities being engaged in the process, surely they need to be consulted. At the moment, if a developer or someone else wants to remove trees, they need only consult the local authority. I understand that there is no onus on the authority to consult the local community.

Jill Butler: In conservation areas, which are mainly for buildings, the strong guidance is that authorities should set up community involvement in area management plans. We are very supportive of longer-term management plans that set out what is expected in the community. Such plans would operate over five years and not require a lot of detail. We agree that the same standards that apply to a private owner should apply to local authorities in managing their own trees. We are not certain that that is happening as effectively as possible at the moment.

We need a mechanism by which to determine the value of trees. Obviously, local authority resources have to go to the most important trees. We need a national register, beneath which would be a register of regional value trees and one for local value trees. Such a mechanism would enable resources to go to the most important trees as a priority. People will know which trees in their community are the most important, and when resources are tight they will ensure that resources go in that direction. We need such a system, not one that results in notifications for very small trees where the impact of losing them would be small.

Col 2811

Resources must not be taken away from the more important trees.

We feel that there is an opportunity for more reallocation of resources, but we need to have a tree conservation area tool in the toolbox so that when local authorities consider whether they have the right tree in the right place and do tree and forest strategies as part of the trees and woodlands strategy approach, they can follow that up by giving wonderful areas of trees conservation area-type designations.

John Scott: I would like to add to that. At the moment, there is a statutory obligation to consult community councils if any development work is to be done, regardless of whether it involves trees being felled. In addition, if someone wants to do any tree work in a conservation area, whether it is trimming or whatever, they have to fill in a form and state in their application the extent of the work and the reason for it. I think that having to put in such applications helps to focus people's minds. For example, someone who wanted to chop down a tree simply because it was making a mess of their driveway would realise, "Oh no. Maybe that is not an acceptable reason for removing a tree." Apart from anything else, having to sit down and put in writing why they want to carry out tree works raises people's general awareness and appreciation of trees in the environment.

The Convener: Thanks very much. Do members have suggestions about where we should go with the petition?

Nanette Milne: Again, we need to get in touch with the Government and ask what its views are on what the petitioners propose. Some valid points have been made, which potentially offer a good way forward on the preservation of the country's important trees.

The Convener: Absolutely. Anyone else?

Robin Harper: It might be useful to write to a selection of local authorities and—given that what is proposed has workload implications—the National Association of Tree Officers and the Royal Town Planning Institute, as well as the Forestry Commission and the Woodland Trust. We should ask them to address the issues that have been raised about TPOs and the idea of having a presumption against the felling of trees. That would be a simple way forward.

The Convener: Okay.

John Wilson: I suggest that we also write to the RSPB and the Scottish Wildlife Trust because, as a member of both organisations, I know that they own extensive areas of land. In the past, the RSPB has been involved in clearing land of particular types of trees, so it would be useful to get its view on the proposals in the petition.

Col 2812

The Convener: Yes. Thanks for that.

Robin Harper: It has occurred to me that two other organisations—Historic Scotland and the National Trust for Scotland—might have some useful observations to make. I should add that I am a member of both those organisations.

The Convener: I thank the witnesses very much for their evidence.

ANNEXE B

WRITTEN SUBMISSIONS TO THE PUBLIC PETITIONS COMMITTEE

The following written submissions were received by the Public Petitions Committee in response to questions asked in relation to Petition PE1340. The questions were as follows:

Scottish Government—

- Will you extend the protection enjoyed by trees in conservation areas to all trees?
- Should there be a strict presumption against felling or damage to any trees, irrespective of whether or not these lie in a conservation area?
- What is your response to the points made by the petitioners that the costs of raising a TPO are very high, if not prohibitive, and that it is impractical for individuals or groups to attempt to apply for TPOs for large numbers of trees which, for example, surround a settlement or village? What solutions exist to address this type of situations?
- Can the system of Tree Preservation Orders be a) simplified, b) improved and c) made more accessible? If so, what actions will you take to that effect and when?
- What was the outcome of the recent consultation on the Tree Preservation Orders?
- What is the potential to establish a register to protect trees on a national/regional/local area basis?
- Does the tree protection that applies to developers also apply to householders?

A selection of local authorities (City of Edinburgh, Scottish Borders and East Renfrewshire); National Association of Tree Officers; Royal Town Planning Institute; Forestry Commission; Woodland Trust (Scotland); Royal Society for the Protection of Birds; Scottish Wildlife Trust; Historic Scotland; and the National Trust for Scotland—

- *[To all organisations]* Should there be a strict presumption against felling or damage to any trees, irrespective of whether or not these lie in a conservation area?
- *[Not to RSPB, National Trust for Scotland]* What is your response to the points made by the petitioner that the costs of raising a TPO are very high, if not prohibitive, and that it is impractical for individuals or groups to attempt to apply for TPOs for large numbers of trees which, for example, surround a settlement or village?

- *[to local authorities only]* What evidence do you have that people who propose to work on a tree in a Conservation Area which is not protected by a TPO, but has a trunk diameter over 75mm when measured at 1.5m from ground level, systematically give you notice? Similarly, what evidence do you have that people wishing to fell, prune or uproot a tree within a Conservation Area, always give you six weeks notice? How is this enforced and monitored?
- *[To National Association of Tree Officers only]* Does the tree protection that applies to developers also apply to householders?

WRITTEN SUBMISSION FROM SCOTTISH GOVERNMENT

PETITION PE1340 – PROTECTION OF TREES

I refer to your letter of 9 September, requesting a written response from the Scottish Government to the issues raised in the petition and related discussion, and written questions raised by members of the Committee.

Q 1 – Will you extend the protection enjoyed by trees in conservation areas to all trees?

Conservation Areas are areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance. There is not a strict presumption against felling trees in a conservation area. It is an offence to carry out works to trees in a conservation area without notifying the planning authority which then has an opportunity to designate a TPO should they choose to do so. We do not intend to introduce the same requirement outwith Conservation Areas. Through the planning reform programme we are striving to make the system more efficient and proportionate. Extending planning regulation to all trees in Scotland would be inconsistent with these objectives.

Preliminary investigations also indicate that the proposal would have significant resource implications for planning authorities. A notification would require to be processed by the planning authority every time someone wished to carry out works to a tree. Officer time would be required to investigate alleged breaches. There is no fee system attached to notifications so the planning authority would be unable to recoup the additional costs involved.

Q 2 - Should there be a strict presumption against felling or damage to any trees, irrespective of whether or not these lie in a conservation area?

As discussed above, there is not a strict presumption against felling trees in a Conservation Area. It is an offence to carry out works to trees in a Conservation Area without notifying the planning authority which then has an opportunity to designate a TPO should they choose to do so.

Scottish Planning Policy states that ancient and semi natural woodland is an important and irreplaceable natural resource that should be protected and enhanced. Woodland of high nature conservation value should be identified in development plans along with relevant policies for its protection and enhancement. Other woodlands, hedgerows and individual trees, especially veteran trees may also have significant biodiversity value and make a significant contribution to landscape

character and quality so should be protected from adverse impacts resulting from developments.

The Scottish Government's control of woodland removal policy includes a presumption in favour of protecting woodland resources. Woodland removal should only be allowed where it would achieve significant and clearly defined additional public benefits.

A felling licence from Forestry Commission Scotland is required in order to fell trees, except where exemptions apply, relating to either certain locations, including gardens, orchards, churchyards and designated open space; the type of tree work; the volume and diameter of the tree; where certain other permissions are required and have been obtained; or where trees need to be felled to comply with legal and statutory requirements.

Q 3 - What is your response to the points made by the petitioners that the costs of raising a TPO are very high, if not prohibitive, and that it is impractical for individuals or groups to attempt to apply for TPOs for large numbers of trees which, for example, surround a settlement or village? What solutions exist to address this type of situation?

The research report *The Effectiveness of Tree Preservation Orders in Scotland* (2002) indicated that it costs £10,000 to designate a TPO. As the TPO is a legal document staff costs both in terms of tree officer time and solicitors costs are unavoidable. There are also costs associated with land searches, notification and registering the TPO in the Land Register of Scotland.

A TPO can be designated on an individual tree, groups of trees or woodlands, therefore one TPO could cover a large number of trees. Individuals or groups can request that the planning authority serve a TPO on specified trees. It is the planning authority who considers that request and takes the decision on whether or not to designate the TPO.

Q 4 - Can the system of Tree Preservation Orders be a) simplified, b) improved and c) made more accessible? If so, what actions will you take to that effect and when?

In Scotland the legislation relating to Tree Preservation Orders has changed little since 1975. In 2002 research was commissioned to examine whether the TPO procedures in Scotland are still effective. The research report *The Effectiveness of Tree Preservation Orders in Scotland* published in December that year, found that the TPO system is basically sound, and that a series of fine tunings would provide an up-to-date structure for protecting trees across Scotland.

The Planning etc. (Scotland) Act 2006: introduces a duty on planning authorities to review existing TPOs, expands the powers of planning authorities to serve TPOs to include trees, groups of trees, or woodlands of cultural or historical significance; makes all TPOs provisional for 6 months and introduces a new power for a person authorised by the planning authority to enter land for the purposes of affixing a TPO in certain circumstances.

The TPO Consultation Paper and the draft Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas)(Scotland) Regulations 2010 proposed changes to the TPO system that would: update the references within the regulations to the Town and Country Planning (Scotland) act 1997 and the Planning etc. (Scotland) Act 2006; remove the Model order from regulations to guidance; introduce new procedures where a TPO is not confirmed and introduce new procedures for varying and revoking TPOs. The changes to both primary and secondary legislation are aimed at simplifying, improving and making TPO more accessible. We hope to lay the regulations in Parliament in October 2010, with commencement expected to be early next year.

Q 5 - What was the outcome of the recent consultation on Tree Preservation Orders?

The Tree Preservation Order (TPOs) Consultation Paper (April 2010) sought views on the proposed Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010 and the proposed Model Tree Preservation Order. Overall respondents were generally supportive of the procedures being put forward in the consultation paper. The analysis of consultation responses is available at:

<http://www.scotland.gov.uk/Publications/2010/09/10103253/0>

Q 6 - What is the potential to establish a register to protect trees on a national/regional/local area basis?

The Directorate for the Built Environment does not consider that there is any potential for a statutory register but indicated during the Planning Bill that a non-statutory register may be a possibility. Robin Harper MSP proposed amendments at both Stages 2 and 3 of the Planning etc. (Scotland) Bill, seeking to give Scottish Ministers (or someone on their behalf) powers to compile a register of trees of special interest. The amendment was rejected at Stage 3. The Scottish Government at that time considered that a non-statutory register may be attractive for the purposes of funding, managing or protecting trees, but would not in itself protect trees. The provisions in the Act offer new opportunities to protect special trees, strengthen powers of protection and are proactive on the protection of cultural and historical trees, therefore the case for a statutory register of trees of special interest is not justified. The Scottish Government remains of the view that a register will not guarantee the protection of trees.

Q 7 - Does the tree protection that applies to developers also apply to householders?

With regard to tree protection afforded both by TPOs and conservation areas there are no significant differences in the provisions that apply to developers and householders. The main distinction is that where there is a planning application, it will be considered on the basis of policies within Scottish Planning Policy and Local Plans through the planning system while proposals from an individual simply carrying out work to a tree may not be.

WRITTEN SUBMISSION FROM ROYAL SOCIETY FOR PROTECTION OF BIRDS

Should there be a strict presumption against felling or damage to any trees, irrespective of whether or not these lie in a conservation area?

RSPB Scotland considers that trees, including those within woodland, can provide important habitats for priority bird species and other important wildlife, depending on the location and setting of the tree, the woodland and tree type, tree age, form and condition. RSPB Scotland, however, would not welcome a strict presumption against felling, or damage to any trees, irrespective of whether or not these lie in a conservation area, because:

a) The RSPB has biodiversity concerns about inappropriately located forestry plantations that are on priority open ground habitats, such as blanket and raised bogs, semi-natural grassland and breeding wading bird sites.

The Scottish Forestry Strategy, UK Biodiversity Action Plan, Scottish Biodiversity Strategy and the Scottish Government's Policy on Control of Woodland Removal recognise that such afforested sites and habitats should be restored by tree removal combined with other appropriate remedial action - such as hydrological restoration - and onward management, including grazing management and removal of tree regeneration.

b) Felling woodland trees can be an important method to improve the biodiversity condition of existing native woodlands, as well as maintaining priority open ground habitats, for priority species, priority habitats and designated wildlife sites. There may also be circumstances where it is appropriate to increase the volume and diversity of deadwood habitats for priority biodiversity in woodland through selected management of key woodland trees.

Improving the biodiversity condition of native woodlands, including for priority wildlife species, is a key objective of the UK Biodiversity Action Plan, the Scottish Biodiversity Strategy and the Scottish Forestry Strategy.

WRITTEN SUBMISSION FROM WOODLAND TRUST

As the Committee is now aware, tree protection in Scotland is still lacking particularly for ancient and veteran trees and other trees of special interest (TSIs). For a detailed description of what we mean by ancient, veteran and trees of special interest, we refer you to the document we submitted as additional evidence at the Committee hearing on the 7 September¹. Our response to the questions asked in your letter is below.

Should there be a strict presumption against felling or damage to any trees, irrespective of whether or not these lie in a conservation area?

We do not believe that current strict presumptions against works to trees without notification (Conservation Areas – felling or works to trees) or permission (Felling Licences – felling only) should be extended to cover *all* or *any individual* trees in Scotland; but we do believe that the extension of the Conservation Area approach, should be available to stakeholders to protect trees, especially of special interest

¹ The Woodland Trust. (2008) *Ancient Tree Guide no.4: What are ancient, veteran and other trees of special interest?* Grantham. www.woodlandtrust.org.uk/publications

(TSIs), where they have been identified as being of the highest value by their communities. This should be on the basis of trees in their own right and not require the area to be of special architectural or historic interest.

The original petition statement suggested that *all* trees be afforded the protection of trees within a Scotland wide conservation area mechanism. After further discussion with us subsequent to lodging their petition, and as stated during the committee meeting on 7 September, it is our understanding that the petitioners recognise that a strict presumption against all “felling or damage to any trees” would be unworkable. Instead a modified approach to use Conservation Areas in a targeted way, according to local priorities and resources for identified significant groups of trees of great value, would achieve their objective.

Instead of a strict presumption against the felling or damage to *any* tree regardless of size or location, we are in favour of improving tree protection by a modest step that would broaden the concept for designation of conservation areas to include trees. In this case the strict presumption would be against any works carried out to trees without prior notification to the Local Authority in an area designated as a Tree Conservation Area (TCA). This alerts the LA to possible harm to an important tree and gives the LA time in which to decide if it needs to act in the interests of the community and give it the added protection afforded by a TPO. We believe that in many cases through negotiation and advice to the owner, the requirement to TPO would be limited thereby saving resources and costs. Furthermore, with prior knowledge of the tree resource and a review of the size thresholds in these areas, LA's could deal with notifications in more cost effective ways. We would be happy to explain how this would work to the appropriate stakeholders.

If the Tree Conservation Area designation were developed to enable areas to be designated for trees it would provide another tool for communities and local authorities to use in protecting the most important trees in their local area. Two recent Scottish Government publications, the “Policy on Control of Woodland Removal” and the “Scottish Planning Policy” both identify that woods and trees should be protected, especially those of ancient or veteran status. However an individual tree of special interest that is not within a conservation area or protected by a TPO may be easily lost despite these policies because as a tree owner they the policies do not apply to them. It is only a public body that would need to consider the policies in taking a decision on a planning application or local plan for example. For these important policies to be effective the local authority has to have the appropriate tools to influence the management or protection of trees, especially those that are outside planning application sites.

There is therefore a difference between the situation faced by developers and other tree owners. A developer has to submit a planning application that alerts the LA to a threat to a tree and they can act to protect it if it is of appropriate value. An owner outside a Conservation Area does not need to alert the LA to any works to any trees and some of those trees maybe of very great value to the community. It is an unfair system where owners of tree with TPOs have to obtain approval for further works to a tree, compared with owners of TSIs which are unprotected, who can do what they like.

Communities are understandably very frustrated by this system and incensed when trees that they value are cut down without LA involvement. Judicious use of Conservation Area status for trees would be a cost effective way of preventing loss of trees of value without prior notification to LAs.

In considering this question it is important to be aware that the requirement for owners to seek consent to fell trees (subject to exemptions) already operates over very wide areas, principally of the rural environment, through felling licence controls under the Forestry Act. However the exemptions are such that 5 cubic meters per quarter, which is approximately the equivalent of 2/3 fully mature trees can be felled without the requirement for a felling licence and as such does not protect individual trees of significant value.

What is your response to the points made by the petitioner that the costs of raising a TPO are very high, if not prohibitive, and that it is impractical for individuals or groups to attempt to apply for TPOs for large numbers of trees which, for example, surround a settlement or village?

The 2002 report *The Effectiveness of Tree Preservation Orders in Scotland* estimated the cost of implementing a TPO is about £10,000. We question this considerable figure because there is no publicly available information to enable us to comment. Furthermore a TPO can be made to protect an individual tree, groups, areas and woodlands in any combination, so costs will vary. Where community requests are made for large numbers of trees to be protected, we believe that through good community engagement the costs of surveying and recording could be reduced by the use of appropriate volunteers.

It is important to remember that protection of what is valuable cannot come without costs and we are pleased that LAs, once alerted by a planning application, recognise the value of trees that may be threatened by development and place TPOs on important trees of value to the community to secure their future.

What concerns us is that many trees of greater worth than those directly affected by development are not protected where appropriate. It is our view that resources should be directed to trees of greatest value regardless of whether they are affected by planning applications or are owned by individual or multiple owners. There should be choice available for LAs to use the mechanism that is most appropriate to the circumstances. If the tree conservation area approach were available to LAs, the steps could be as follows:

- If there are many significant trees of special interest in an area in the ownership of many owners then the TCA approach is the first step.
- If there are many TSIs *at risk* in the ownership of one or two owners then a TPO utilising the Area notation maybe more appropriate
- If there is one or a few TSIs *at risk* then a TPO may be the most appropriate way forwards.

The additional tool of the TCA would achieve a number of things. First it would allow stakeholders and LAs to be proactive in the protection of their tree resource. Secondly it would allow LAs the time to protect the most important trees of special

interest in a strategic manner. And thirdly it would allow areas of trees with multiple owners to be protected in a more cost effective way.

We believe that the use of a new Tree Conservation Area designation could result in local authorities being better able to prioritise the trees in their area that require TPOs and at the same time enable them to engage with applicants on managing and maintaining trees that may otherwise have been lost. Ultimately this could reduce the TPO cost burden by reducing the need for TPOs to be placed on all but the most important trees that are threatened. Furthermore there would be no requirement on LAs to use Tree Conservation Areas if they were not appropriate for them.

WRITTEN SUBMISSION FROM SCOTTISH WILDLIFE TRUST

Should there be a strict presumption against felling or damage to any trees, irrespective of whether or not these lie in a conservation area?

The Scottish Wildlife Trust acknowledges that trees outwith woodlands, can add value to local biodiversity, contribute to green infrastructure and the green ecological network, provide a 'sense of place,' connect people to nature - particularly in an urban setting, and provide ecosystem services such as attenuating the micro-climate, storing carbon, removing atmospheric pollutants and regulating water flow.

Woodland provides substantial benefits to both wildlife and people. As the former climax vegetation community over much of Scotland, woodland and scrub supports more species than any other terrestrial habitat, particularly ancient semi-natural woodlands which are the surviving descendants of our original natural forests. These are vitally important, irreplaceable reservoirs from which wildlife can begin to spread back into newly restored habitat thereby helping Scotland's ecosystems to recover from centuries of degradation. In addition to supporting much of our biodiversity, woodland provides highly valued social and economic benefits to Scotland's people.

We do not believe that a strict presumption against felling or damage to **any** tree is practical, workable or desirable. There are circumstances where tree planting/regeneration is inappropriate and a programme of tree removal should be implemented to increase the biodiversity value of the site. E.g. removal of trees encroaching on lowland raised bog, blanket mires and fens (although it is accepted that some 'bogs' are now likely to be so heavily modified that removing trees may do more harm than good, both ecologically and in terms of carbon release); tree thinning/removal to 'open up' the forest canopy and/or increase the amount of 'dead wood in the woodland/park. In addition, part of a woodland management strategy may involve the removal of non-native tree species, such as sycamore and Sitka spruce.

We do recognise that there are notable trees (e.g. those that have high biodiversity value as well as cultural value), particularly those located in an urban setting, which presently lack protection and are therefore vulnerable to felling because they do not have a tree preservation order (TPO) or lie outwith a conservation area. Therefore it would appear sensible to re-examine the ways in which trees which have biodiversity, cultural and historical value could be protected to prevent the

occurrence of inappropriate felling which can cause anger and frustration within the local community and in some circumstances be harmful to wildlife.

WRITTEN SUBMISSION FROM THE NATIONAL TRUST FOR SCOTLAND

The National Trust for Scotland (the Trust) welcomes the invitation to comment on the above Petition. It is our understanding that our views are particularly sought on the question 'whether there should be a strict presumption against felling or damage to any trees, irrespective of whether or not these lie in a conservation area'.

The Trust, as Scotland's largest conservation charity, does much to manage and advocate on behalf of the natural environment. As such it can sympathise with the motivations of the petitioner but considers for such a presumption to be credible and effective that it would need to be accompanied by a system for management and with it attendant standards, possible public liability requirements, exemptions and sanctions. There is such a wide range of objectives, contexts and circumstances not to mention numbers, under which trees are managed or landscapes / public realm improvements can be sought to make such a system, if workable, very resource intensive. In addition we understand there are increasing attempts to protect trees through supplementary planning guidance and that the Forestry Commission Scotland operates stringent licensing limits on numbers of trees removed for commercial purposes. Rather we would prefer to see any additional resource being used to manage better existing woodlands, incentivise increased planting where appropriate and help with promoting the value and benefits of trees to owners and the wider community.

For the avoidance of doubt we would be happy for this letter to be made available to the public and we would be grateful to be kept advised of the outcomes of this consultation.

ANNEXE C

EXTRACT FROM OFFICIAL REPORT OF PUBLIC PETITIONS COMMITTEE
MEETING 23 NOVEMBER 2010

INCREASING THE PROTECTION OF SCOTLAND'S TREE HERITAGE

Tree Preservation Orders (PE1340)

The Convener: Our next petition is PE1340, by John Scott, on behalf of Neilston and district community council, on increasing the protection of Scotland's tree heritage. I seek members' views on the petition.

Robin Harper: As the notes point out, I have pursued the issue previously. The Wildlife and Natural Environment (Scotland) Bill is currently passing through stage 1 in the Parliament. Trees are part of ecosystems and make a considerable contribution to biodiversity and wildlife. I wonder whether the committee would see fit at least to refer the petition to the relevant committee, which I believe is the Rural Affairs and Environment Committee, while the bill is at stage 1 for consideration in relation to the way in which the bill is being formed.

The Convener: Are you proposing that we keep the petition open and refer it to the Rural Affairs and Environment Committee?

Robin Harper: Yes. I should declare an interest as a member of the Woodland Trust and several other woodland trusts.

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The Convener: Does the committee agree to keep the petition open and refer it to the Rural Affairs and Environment Committee?

Members *indicated agreement.*

ANNEXE D

EXTRACT FROM OFFICIAL REPORT OF RURAL AFFAIRS AND ENVIRONMENT COMMITTEE MEETING 19 JANUARY 2011

The Convener: The next group is on tree conservation areas. Amendment 156, in the name of Bill Wilson, is the only amendment in the group.

Bill Wilson: A recent petition to the Public Petitions Committee—PE1340—focused attention on the issue of inadequate protection for some of Scotland's important trees. Tree preservation orders do of course exist at present, but they tend to be used for trees under threat and they also tend to be expensive to introduce. The Woodland Trust estimates that it costs between £5,000 and £10,000 per order. Trees can also be protected if they fall within a conservation area and are not specifically exempted.

Amendment 156 proposes to use the protection powers that are offered to trees within a conservation area and apply them to a new form of conservation area: a tree conservation area. That would allow local authorities, when preparing local plans, to designate, after public consultation, an area as a tree conservation area. The proposal is intended only to protect trees within the conservation area and is not intended to place any wider architectural restrictions or other burdens on land or property owners.

There is a variety of reasons why such protection might be considered necessary. The Woodland Trust makes the point that mature and ancient trees can be particularly valuable from a biodiversity perspective but are often unprotected; the ancient tree hunt campaign has identified 182 important yet unprotected trees. Stands of trees can be very important to communities, and I am sure that I do not have to remind the minister of the recent paper in *The Lancet* highlighting the value of green space to individuals' health. The proposal in amendment 156 aims to give local authorities another means by which they can protect trees with a high biodiversity, cultural or historic interest.

I move amendment 156.

Roseanna Cunningham: I am, of course, aware of the recent petition on the apparent inadequate protection for special trees, particularly those that are ancient or veteran, or have high value. However, I am pleased to say that the recent commencement of parts of the Planning etc (Scotland) Act 2006—so ably put through Parliament by the then minister, Stewart Stevenson—will provide an opportunity to address the issues that amendment 156 raises. From 1 February 2011, it will be possible to serve a tree preservation order on the basis of a tree's cultural or historic significance. Planning authorities will therefore be able to serve TPOs relating to ancient or veteran trees, or trees of high value.

Although the proposal for tree conservation areas would make it an offence to damage the trees that it protects, a TPO would still have to be served when the planning authority considered that proposed works would damage an area's amenity value. We have no evidence to suggest that planning authorities desire or would use

the power proposed by the amendment. It is open to debate whether it would result in a light-touch mechanism.

I consider the amendment to be unnecessary in the light of the changes to tree preservation orders that I have outlined. Therefore, I do not support amendment 156.

Bill Wilson: In the light of the minister's comments, it is reasonable to give the TPOs an opportunity to work, so I will not press the amendment.

Amendment 156, by agreement, withdrawn.

ANNEXE E

WRITTEN SUBMISSION FROM JOHN SCOTT (DECEMBER 2010)

Further to the recent referral to the Rural Affairs and Environment Committee of the Neilston and District Community Council Petition on 'Increasing the protection of Scotland's tree heritage', PE1340, we write to clarify what our petition is asking for and why we believe it is possible to include this proposal in the Wildlife and Natural Environment Bill.

Our original petition set out a proposal for all trees in Scotland to be protected to the same degree as trees within Conservation Areas (as designated in the Town and Country Planning (Scotland) Act 1997). Having talked to professionals, local authority staff, staff at the Woodland Trust Scotland and members of the Petitions Committee, we acknowledge that blanket protection of this nature is not necessary because of other legislation pertaining to trees. However there is still a need for an additional mechanism to allow local authorities to increase tree protection in specified areas.

As a result, we would like to see a provision for 'Tree Conservation Areas' (TCA), taking the form of the protection currently set out for trees in the Conservation Area legislation.

What we are proposing is a tidying up measure to designate areas of trees, specified by local authorities in consultation with their communities, where a need for further protection has been identified. At present local authorities have the ability to place important trees under a Tree Preservation Order if they deem it necessary but this process takes a number of weeks and can be costly. The TCA proposal would allow local authorities another tool to prevent important trees being felled without a discussion on the management of the tree taking place. This would help reduce the burden to both the local authority and the tree owner. If a tree was still deemed to be under threat, the local authority would still be able to place a TPO upon it as a last resort.

The conditions that would be imposed in a TCA are already in statute under Conservation Areas the Town and Country Planning (Scotland) Act 1997. We seek the specific ability for the powers relating to trees to be used specifically for the designation of tree protection. The terms of protection would be the same as the protection currently afforded to trees within Conservation Areas. Designated TCAs would only apply measures to trees within the designation area and would not apply any other restrictions or requirements as set out for Conservation Areas more generally. For example the conditions relating to altering outside features of property would not be included.

How are they designated?

At present, in relation to Conservation Areas, a planning authority is required to determine which parts of its area are of special architectural or historic interest. It may designate these as conservation areas. The public will normally be consulted on any proposal to designate conservation areas or to change their boundaries.

Proposals for conservation areas are usually brought to the public's attention when the local plan for your area is reviewed.

We propose that the process for designating a TCA would be the same as an architectural or historic Conservation Area. TCA could be included in a planning authority's local plan and become an important tool in delivering protection to trees identified in their Forestry and Woodland Strategy.

The scope of the Wildlife and Natural Environment Bill

It is our understanding that the WNE Bill has an overarching purpose to, "deliver a package of measures intended to ensure that the legislation which protects wildlife and regulates the management of the natural environment and natural resources is fit for purpose."

We view Scotland's trees, and particularly its ancient, veteran, and trees of special or historical interest, to be extremely valuable natural resources in their own right but also in their role as key habitat for a host of other biodiversity and wildlife, and for their amenity value to local communities.

We also believe that the addition of TCA would help address weaknesses in the current provisions for the protection of trees in Scotland by adding another tool for tree protection.

The addition of a subsection within Part 4 of the Bill seems the most obvious position for an amendment to this affect to be placed.

Submitted by John Scott, on behalf of Neilston and District Community Council, with support from the Woodland Trust Scotland.

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

RECENT DEVELOPMENTS WITHIN THE COMMITTEE'S REMIT

Note by the Clerk: Each time an agenda and papers for a meeting are circulated to members, a short paper like this one will also be included as a means of alerting members to relevant documents of general interest which they can follow up through the links included.

Future of agricultural support in Scotland

The Cabinet Secretary has written to the Convener following his appearance before Committee on 23 February. The letter can be accessed here:

<http://www.scottish.parliament.uk/s3/committees/rae/documents/documents/20110303RLtoMWCAPformatted.pdf>

Fisheries

Commissioner Maria Damanaki made a speech in Brussels on the 1 March regarding discards. The speech can be accessed here:

http://ec.europa.eu/commission_2010-2014/damanaki/headlines/speeches/2011/03/20110301_en.pdf

Economy, Energy and Tourism Committee Report

The Committee has published its 2nd report of 2011 entitled "A fundamental review of the purpose of an enterprise agency and the success of the recent reforms", which includes a review of the effectiveness of HIE among others. A link to the news release is provided here:

<http://www.scottish.parliament.uk/nmCentre/news/news-comm-11/ceet11-s3-001.htm>

and the report can be accessed here:

<http://www.scottish.parliament.uk/s3/committees/eet/reports-11/eer11-02-01.htm>

Reasoned opinion on 5084/11 Proposal for a European Parliament and Council Regulation establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)

Attached is a written response from the European Commission to the House of Lords in response to its reasoned opinion.